THE

LAST WILL AND TESTAMENT

OF

DR. JAMES RUSH,

OF THE CITY OF PHILADELPHIA.

PROVED AT PHILADELPHIA MAY 31, 1869.

PHILADELPHIA:
COLLINS, PRINTER, 705 JAYNE STREET.
1869.

Mem: of dispositions of Personal property made by Dr: Rush on Thursday & Friday April 16th & 17th A D 1869.

To be absolute gifts at this time, but the articles & money to be delivered & paid at his death, and not to be included in the Inventory of his Testamentary Estate.

In Cash.

Miss C Little $500

Mary Lee besides the legacy of $200 ——— 800

Jane Kelly ——— 200

James G. Winning 1.000

and all his Tools for Carpenter Work. ———

James S. Farmer 500

Richard S. Hunter 500

Total $ 3.500

James Rush's Will

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WILL OF JAMES RUSH, M. D.

Be it remembered, That I, JAMES RUSH, of the city of Philadelphia, M. D., do make this my last will and testament, hereby revoking all others by me heretofore made, in manner following—that is to say:—

I will and direct that all my just debts, which will be found very few in number and insignificant in amount, shall be paid by my executor as soon as possible.

It is my intention, by a codicil or codicils to this my will, to give considerable legacies, annuities, and devises to different persons, but as I desire to take some time for reflection on this subject, and as I have made up my mind as to the disposition of my residuary estate after the payment of these legacies, annuities, and devises; now, therefore, I do hereby give, bequeath, and devise my whole estate, real and personal, legal and equitable, whatsoever and wheresoever the same may be, unto my brother-in-law, HENRY J. WILLIAMS, of the city of Philadelphia, his heirs and assigns, to be held by him for and upon the following trusts and purposes, and for

and upon no other use, trust, or purpose whatever—that is to say:—

In trust, after paying, providing for, and complying with all legacies, annuities, gifts, bequests, and devises, declarations, and intentions which may be contained and expressed in any codicil or codicils to this, my last will and testament, which I may hereafter make (to be signed by me at the end thereof), whether the same be formally drawn or not; to have and to hold the whole residue and remainder of my estate, real and personal, whatsoever and wheresoever the same may be, for the following uses and purposes, viz:—

In trust, to select and purchase a lot of ground not less than one hundred and fifty feet square, situate between Fourth and Fifteenth and Spruce and Race Streets, in the city of Philadelphia, and thereon to erect a fire-proof building sufficiently large to accommodate and contain all the books of the Library Company of Philadelphia (whose library is now at the corner of Fifth and Library Street), and to provide for its future extension according to plans, directions, and specifications which I shall hereafter make or give; but if I should not make or leave any such plans, directions, or specifications, then to erect the same according to his best judgment and to the views which I have expressed to him. It is my wish that this building should be exceedingly substantial, completely fire-proof, without any large, lofty, or merely ornamental halls or lecture-rooms; the whole interior to be divided in such a way as to contain the

greatest number of books, to be well lighted, and so arranged as to be of easy and convenient access.

AND UPON THIS FURTHER TRUST, so soon as this building is completed and ready for occupation, then in trust to convey the same, with the lot of ground whereon it is erected, unto "The Library Company of Philadelphia" aforesaid, and their successors, for the uses and purposes of their library, and for no other use or purpose whatever.

Provided, however, that before any such conveyance shall be made to the said Library Company, they shall, either by an alteration in their charter, or in some other way satisfactory to my executor, bind themselves and their successors to conform to and comply with the following express conditions, and any others I may hereafter impose, under which they are to hold the said property and all other bequests and devises herein or hereafter given to them:—

First. That the said Library Company shall not cause, allow, or permit any lectures, public orations, or oral addresses or exhibitions of any kind to be delivered, given, or to take place on the said lot of ground, or in the said building; nor shall they cause, allow, or permit the formation of any museum, cabinet, gallery, or collection of natural history, statuary, sculpture, portraits, or paintings thereon or therein, nor shall they use, apply, or expend any funds, derived from me, or under my will or any codicil thereto, in procuring or defraying the expenses of any such lectures or exhibitions, public ora-

tions, or oral addresses, or in the establishment or support of or for additions to any such museum, cabinet, gallery or collection, painting, or portraits (and especially that of the testator) on the said lot and in the said building or elsewhere.

These are objects foreign to and inconsistent with the legitimate purposes of a public library, and it is only for the preservation, extension, and free and convenient use of such a library, without any ambitious or pretentious display, that it is desired to make provision.

Second. That all the accounts of the receipts and expenditures from the estates aforesaid, real and personal, shall be kept separate and distinct from all other accounts of the said Library Company, and shall all be headed and kept as the accounts of "THE RIDGWAY BRANCH OF THE LIBRARY COMPANY OF PHILADELPHIA," so that it may be always easily and certainly ascertained whether the application of those estates and the income derived therefrom has been in accordance with the provisions of this my will.

And I further will, direct, bequeath, and devise that whenever the said building shall have been completed and transferred to the said Library Company, and the preliminary conditions complied with, then my said executor shall assign, transfer, and convey, by one or more deeds and instruments, all the rest and remainder of my residuary estate not laid out and expended in the purchase of the lot and the construction of the building aforesaid, and in the legal and customary charges and

expenses, unto the said Library Company, to be held and used by them and their successors for the following uses, trusts, and purposes:—

First. In trust to keep the whole of the real estate granted and conveyed to them by my executor, in good order and repair, and to make from time to time such additions to the library building as may be found necessary for the extension and preservation and convenient use of the said library and all additions thereto.

Second. In trust, after paying all necessary taxes, charges, and expenses incident to the said property, to set aside annually ten per cent. of the clear net income, to form a contingent fund, to be invested, and the interest added to the principal, which fund, or so much thereof as may be required, shall be applied:—

First. To build upon, improve, alter, and renew any lands and tenements hereby devised to the said Company, so as to increase the income derived therefrom.

Second. To make good and replace any losses from the failure of any investments made of or from the property hereby bequeathed for the said Company; and,

Third. Whenever the said contingent fund shall amount to $30,000, then to pay over and apply the whole surplus beyond the said $30,000 for the general purposes to which the income of this residuary estate is herein directed to be applied.

Third. In trust to pay all necessary salaries of the librarian and his assistants, and the expenses of binding and preserving the books of the whole library, making

cheap catalogues, and all charges incident to its care and management. The said library is to be kept open from nine o'clock A. M. until at or near sunset, except on Sundays and holidays.

Fourth. And in trust, after complying with and fulfilling the previous trusts, and purposes hereinbefore contained and expressed, to apply the remainder or surplus of the said net annual income, or so much thereof as may be necessary or desirable, to the increase and extension of the said library.

But I direct that no portion of my real estate aforesaid shall be sold by the Library Company for ten years after my death, nor then, unless it be absolutely necessary for the purposes of this trust, even if additional income should be derived therefrom; and in no case, unless the said sales are sanctioned by a decree of the Orphans' Court or a court of equity, which shall decide such sales are not in contravention of the spirit of this my will.

And in order to enable my executor to carry out the directions of this my will, I hereby authorize and empower him to grant, bargain, and sell any part or parts of my real estate, at public or private sale, for any price or consideration, with any restrictions, reservations, covenants, or conditions, for cash or on credit, taking security on the premises for the balance of the purchase moneys; or to let on ground rent, mortgage, exchange, or make partition of the same, or any part or parts thereof; and to seal, execute, and deliver all deeds, conveyances, mortgages, assurances, or other instruments,

necessary for the purposes aforesaid, without any obligation on the purchaser or purchasers to see to or be responsible for the application of the purchase money or other consideration, or for the propriety of the exercise of this power.

And I further will, devise, and direct that all investments if any should be made by my executor, and all those which may at any time hereafter be made by the said Library Company from the principal or income of my said estate shall be in ground rents or other real estate in the State of Pennsylvania, or in bonds and mortgages upon property within the said State, or in loans of the said State, or of the United States; and lastly, I hereby appoint my brother-in-law, Henry J. Williams, of the city of Philadelphia, executor of this my last will and testament.

In witness whereof I have hereunto set my hand and seal this 26th day of February, A. D. eighteen hundred and sixty, 1860.

(Signed) JAMES RUSH.

Witnesses—Wm. F. Judson, J. S. Farmer,
R. S. Hunter, J. S. Farmer.

October 16, '65.

FIRST CODICIL.

Be it remembered, That I, JAMES RUSH, of the city of Philadelphia, M. D., do make this codicil to my last will and testament, dated the twenty-sixth day of February, A. D. eighteen hundred and sixty (1860), in manner following—that is to say:—

Whereas, By my said last will and testament, I have provided that the bequests and devises to the Library Company of Philadelphia are to be held under the conditions and restrictions therein contained, and any others which I might thereafter impose; now, therefore, in accordance with, and in execution of that provision, I add and impose the following conditions, restrictions, and directions:—

First. One of my objects in giving my residuary estate for the use of the said Library Company was to express my respect and regard for my father-in-law, the late Jacob Ridgway, and my affection for and gratitude to his daughter, Phœbe Anne Rush, by erecting to their memories a monument which I hope will prove more durable than any other grateful record I could make, and be infinitely more useful to the community. As it was from them I derived the greater part of my property, which (under the special and prudent management of faithful and trustworthy agents) has enabled me to devote happily, and undisturbed, the latter part of

my life to pursuits of scientific inquiry, which I have designed to be more beneficial than the more common enjoyment of an ample fortune, it is both just and proper that I should thus employ it, the more especially as Mrs. Rush had led me to believe that if she had survived me, she would have applied it to a similar purpose. Now, in order to carry out this intention in a public and permanent form, I direct my executor to have a marble slab, with the following inscription, on a plain ground, with a border of simple moulding, without any surrounding ornaments, placed and maintained on some appropriate part of one of the interior rooms of the new library building, in which my private library and other personal effects are to be preserved,

THE RIDGWAY BRANCH
OF THE
PHILADELPHIA LIBRARY.
A MONUMENT TO THE MEMORY OF
JACOB RIDGWAY
AND OF HIS DAUGHTER
MRS. PHŒBE ANNE RUSH.

Second. I direct my executor to have inserted in the act of Assembly which will be required to carry out the provisions of my will and codicils, clauses enacting—

First. That not more than one-fourth of the directors of the library shall belong to any one of the three learned professions, of law, theology, or medicine. This clause is, however, not intended to exclude any of the present members from re-election.

Second. That the number of shares in the library shall be limited to those actually issued at the time of my death. But the managers, by their by-laws, shall have the authority to allow any respectable person depositing an amount and paying an annual sum to be fixed by the Board of Managers, to have the full and free use of the library, as completely as if they were shareholders.

Third. That the library shall not connect themselves with any other body, corporate or politic; my residuary estate will form a large fund for the use of the library, and I wish them to be free from every inducement to go beyond what I consider the legitimate objects of a library company.

Third. I will add that my reasons for choosing the Philadelphia Library Company for my residuary legatee and devisee are because it has always been conducted quietly and unobtrusively, steadily pursuing the appropriate objects for which such libraries were established, keeping entirely aloof from the excitement of politics and of other means whereby public bodies so frequently seek to obtain an evanescent and mischievous notoriety, and because during my early life I derived great pleasure and advantage from the use of its books, and from the readiness and civility with which they were always furnished me.

Fourth. I understand that the Managers of Library Company have never applied any of its funds to defray

the expenses of the very simple refreshments of which they are accustomed to partake at the monthly meetings of the board, but have invariably paid them from their own personal means. I highly approve of this course, which I fear is not very usual, and in order that their example may be followed by their successors, I direct that no part of the funds of the Ridgway Branch of the Philadelphia Library shall ever be used or expended in providing refreshments, lunches (so called), feasts, or entertainments for managers, visitors, shareholders, or for any other persons whatever.

Fifth. I do not wish that any work should be excluded from the library on account of its difference from the ordinary or conventional opinions on the subjects of science, government, theology, morals, or medicine, provided it contains neither ribaldry nor indecency. Temperate, sincere, and intelligent inquiry and discussion are only to be dreaded by the advocates of error. The truth need not fear them, nor do I wish the Ridgway Branch of the Philadelphia Library to be encumbered with the ephemeral biographies, novels, and works of fiction or amusement, newspapers or periodicals, which form so large a part of the current literature of the day. The great object of a public library is to bring within the reach of the reader and student works which private collections do not, and cannot, contain, and which in no other way could be accessible to the public. Its excellence will depend—not upon the

number of its volumes—but upon their intrinsic value, and I wish this principle to be carried out by the managers, who, I hope, will never be influenced by the too common ambition for mere numerical superiority.

Sixth. I give and bequeath all my pictures, my private library, my manuscripts, copyrights, and papers, and also those of my father, Dr. Benjamin Rush (in my possession) to the Library Company, to be by them placed in a room in the new building, and there safely kept. The books may be used as the other books of the Library Company, but this room is not to be opened to gratify idle or objectless curiosity.

Seventh. I will and direct that the building to be erected for the Philadelphia Library Company, under the provisions of my will, shall have a basement story, of a height not less than eight feet six inches above the level of the pavement at its front, leaving the height of such basement in the rear to depend upon the grade for the drainage of the lot. The entrance to the front of the story, immediately above the basement, shall be by a broad flight of stone steps. Other entrances may be made in such places and manner as convenience or necessity may require.

Eighth. If the Philadelphia Library Company should omit or decline to accept my residuary estate on the terms and conditions in my will and codicils contained, or fail to comply with any of the preliminary stipula-

tions and directions therein mentioned, then I give and devise the whole residue of my estate, real and personal, whatsoever and wheresoever the same may be, after paying and securing all annuities, bequests, legacies and devises, other than those to the said Library Company in this, or any future codicil contained, unto HENRY J. WILLIAMS, my executor, in my said last will named, his heirs, executors and administrators in trust therewith, to found and endow a public library entirely distinct from and independent of the Philadelphia Library Company, to be named and called the Ridgway Library, under the rules, regulations, conditions and stipulations in my said last will, and the codicils thereto expressed and contained. I wish that the greater part of my estate may be spent in completing the new library building. The annuities as they expire and fall into my residuary estate will be amply sufficient for all the legitimate purposes of a library.

Ninth. By my last will and testament hereinbefore referred to (dated February 26, 1860), I have given, bequeathed, and devised my whole estate, real and personal, unto HENRY J. WILLIAMS, my executor, his heirs, executors, administrators, and assigns, in trust; in the first place to provide for, pay, and comply with all legacies, gifts, annuities, bequests and devises, declarations and intentions which may be contained or expressed in any codicil to the said last mentioned will and testament, which I might thereafter make, to be signed by

me at the end thereof, whether formally drawn or not; now, therefore, in pursuance of the above provision, I hereby direct, declare, bequeath, and devise as follows:—

Tenth. I give and bequeath unto Mary Lee, a domestic in my service, the sum of two hundred dollars, to be paid to her within six months after my decease; and unto Anne Knee, my faithful attendant for some years, an annuity or yearly sum of two hundred dollars, payable half yearly so long as she shall continue single and unmarried. The said legacy to Mary Lee and the annuity to Anne Knee to be paid to them only in case they shall respectively remain in my service until the day of my death, and in the service of my executor at the same rate of wages which they receive from me so long as he may require them to do so.

Eleventh. I give and bequeath unto Mrs. Catharine Souder, widow of Jacob Souder, deceased, an annuity or yearly sum of two hundred dollars, to be paid to her half yearly so long as she shall continue a widow.

Twelfth. I give and bequeath unto Thomas Craven, who has been for many years the faithful agent of my estate, an annuity or yearly sum of six hundred dollars, to be paid to him half yearly for and during his natural life.

Thirteenth. I give and bequeath unto Miss Caroline Little and her sister, Mrs. S. H. Spruill, and to the survivor of them, an annuity or yearly sum of eighteen hundred dollars, to be paid to them and to the survivor

of them so long as they or either of them shall continue unmarried, and if either of them should marry after my death, then the whole of the said annuity shall be paid to the other so long as she shall continue unmarried as aforesaid.

Fourteenth. I give and bequeath unto Miss Mary Ritchie (the sister of Captain Ritchie, U. S. Navy), an annuity or yearly sum of one thousand dollars, to be paid to her half yearly, so long as she shall remain single and unmarried.

Fifteenth. I give and bequeath unto each of my nephews and nieces, Benjamin, Maria, S. Catharine, and Richard H. Rush, children of my brother, the late Richard Rush, an annuity or yearly sum of three hundred sixty dollars, to be paid half-yearly to each of my said nephews for and during their natural lives, and to each of my said nieces so long as they respectively shall continue single and unmarried without any survivorship. These several annuities, with one of a similar amount which I intended to have given to their brother, the late J. Murray Rush, make together the sum of eighteen hundred dollars per annum, which I had designed for the children left by my brother, Richard Rush.

Sixteenth. I give and bequeath unto my niece, Mrs. Georgiana Clark, wife of E. A. Clark, Esq., and daughter of my sister, Mrs. Emily Cuthbert, of Lanoraie, Canada East, an annuity or yearly sum of eighteen hundred

dollars, to be paid to her half-yearly so long as she shall continue the wife or widow of her present husband.

Seventeenth. I give and bequeath unto my nephew, Major Robert Manners, and to my niece, Julia Manners, children of my sister, Mrs. Mary Manners, now residing near Rochester, Kent, England, annuities or yearly sums of nine hundred dollars each, to be paid to my said nephew half-yearly, for and during his natural life, and to my said niece so long as she shall continue single and unmarried.

Eighteenth. I give and bequeath unto my niece Julia W. Biddle, wife of Colonel Alexander Biddle, of the city of Philadelphia, and daughter of my late brother Samuel Rush, an annuity of eighteen hundred dollars, to be paid to her half yearly so long as she shall continue the wife or the widow of her present husband.

Nineteenth. I give and bequeath my four Ridgway silver dishes to my brother-in-law, John J. Ridgway, now residing in Paris.

Twentieth. I give and bequeath all the personal wearing apparel, watches, jewelry, trinkets, &c., of my late wife and of myself to my executor, to be disposed of according to verbal directions which I have given him, but without any obligation to account to any person whatever for them or any of them, or for the disposition thereof.

Twenty-first. As the delays of the law, of the courts, or of the lawyers may prevent me from disposing in my

lifetime, of my share of my brother, William Rush's estate, in case I should not have done so in my lifetime, I give and devise the whole thereof to my niece, Mrs. Georgiana Clark, daughter of my sister, Mrs. Emily Cuthbert, her heirs, executors, and administrators, as a remuneration for *her* mother's share of *my* mother's estate, of which she was thoughtlessly and ungenerously deprived.

Twenty-second. I will and direct that all legacy or collateral inheritance taxes chargeable upon the bequests, legacies, and annuities given or bequeathed by my last will and testament or by any codicil thereto, shall be paid from and out of my residuary estate, and that all the annuities therein and thereby given shall commence from the day of my death. I also will and direct that all the annuities which I have given, or may hereafter give to any married lady, shall be for their sole and separate use, freed from all debts, obligations, or control of their respective husbands; and that all the annuities which I have given to any female, married or single, or which I may hereafter give them, shall be payable to them personally, or to their own order or receipt, signed and dated not more than three months before the same falls or becomes due, and shall not be subject to any anticipation, lien, or incumbrance, nor to any transfer or assignment by their own act, or by the act or operation of law, or otherwise. And in case any of the said female annuitants shall attempt to alien, anticipate, encumber, or assign her annuity, or cause, or permit, or suffer, or

procure it to be done, then and in that case, I authorize and empower my executor, in his discretion, to withhold the semi-annual payments thereof (which shall fall into and become part of my residuary estate), until the attempted alienation, anticipation, lien or encumbrance, transfer or assignment shall be cancelled, released, given up, and annulled. And I further will and direct that all the annuities which I have given, or which I may hereafter give, shall, upon the expiration of the periods for which they were respectively given, fall into and become part of my residuary estate.

Twenty-third. I direct my executors to dispose of the perishable part of my furniture, but not to have any auction upon any part of my premises. I wish it sold as quietly as possible, and would prefer a private sale, even if it were not so productive. I also direct my executor to keep my residence, No. 1914 Chestnut Street, for at least two years, unless he can dispose of it at private sale for a price which, in his sole discretion, he may think reasonable. At the expiration of that time he may dispose of it as he may think best.

Twenty-fourth. I have given verbal directions to my executor to have my funeral as private as possible, without any of the ordinary external indications of mourning.

No invitations are to be sent, except to my *nearest* relations, and I specially desire that I may be buried in silence. If circumstances will permit it, I should be

glad that the remains of the late Jacob Ridgway, of his daughter, my late wife, and of myself, should be removed to the new library building, when it is completed, and be placed in some spot within the outward limits of the building, under a plain and simple tablet. The library itself is intended for their monument, and I want none for myself. If, however, the parties interested in the ground in which my father-in-law is buried should object to his removal, then I desire that my wife and myself may be placed in the new library building as above directed. The library will then be her monument, and I desire to lie by her side.

Twenty-fifth. And I further will and direct that if any of the devisees or legatees or annuitants herein named shall attempt, themselves, or aid, assist, or encourage others to question, dispute, litigate, or object to the validity or effect of any part or portion of my will, or any codicil thereto, or of any gift or devise therein mentioned, then, and in that case, all the clauses in my said will or any codicil thereto conferring any benefit upon the person or persons aforesaid shall stand and be revoked and annulled, and the same shall be paid and given over to the said Library Company.

Twenty-sixth. Events and circumstances occurring within the last six years have obliged me to make several changes in my will, and I should have preferred that all my testamentary dispositions should have appeared as a complete whole, instead of being contained in separate

instruments; but at my age life is precarious, and were I to have them condensed, redrawn, and re-executed, the most important part of the whole might fail under the operation of the ill-conceived, inconvenient, and mischievous law (resulting from a narrow sectarian spirit) which avoids all gifts to literary or religious institutions made and witnessed within a calendar month of the termination of a testator's life, no matter what his mental capacity may have been. To avoid the possibility of such a result, I must let it stand as it is, and add other provisions as they may occur to me.

Twenty-seventh. If any annuitant in any codicil to my last will named, whose residence is in the United States of America, shall leave this country after my death to remain either temporarily or permanently abroad, I will and direct that their respective annuities shall be suspended until their return; and the several half yearly payments becoming due during their absence shall fall into and become part of my residuary estate.

Twenty-eighth. I desire my executor to be allowed a commission of three per cent. upon the administration of my estate; and, in the case of the death of my brother-in-law, HENRY J. WILLIAMS, whom I have named as my executor in my last will, either before or after me, I nominate and appoint Colonel Alexander Biddle and Thomas Craven to be my executors in his room. They are not, however to assume the executorship, or be qualified therefor, until after his death, resignation, or refusal to act.

In witness whereof I have hereunto set my hand and seal this 16th day of May, An. Dom. eighteen hundred and sixty-six (1866).

(Signed) JAMES RUSH. [SEAL.]

Signed, sealed, published, and declared by Dr. JAMES RUSH above named, as and for a codicil to his last will and testament, in our presence, who, in his presence and in presence of each other, at his request, have affixed our names as witnesses thereto.

J. S. FARMER, May 16, 1866.
RICHARD S. HUNTER, May 16, 1866.

ADDITIONAL CODICIL.

Be it remembered, That I, JAMES RUSH, of the city of Philadelphia, M.D., do make this additional codicil to my last will and testament, dated the 26th day of February, A. D. (1860) eighteen hundred and sixty, in manner following—that is to say :—

First. I have given and devised the greater part of my estate to my executor for the purpose of erecting for the Library Company of Philadelphia a building not only large enough to contain their present books, but also their probable increase for many years to come. Now, as I do not desire that the Library Company shall have an income greater than is required to provide for the legitimate (not a competing) increase of the library and their current expenses (not to be so large as to invite

extravagance and waste), for which purposes the sums to be set apart to secure the legacies and annuities given by my said will and testament will be sufficient, I hereby authorize and direct my said executor to expend the whole remainder of my estate in the purchase of a lot and the erection of the library building, construction of book-cases, &c., leaving the said company only an income sufficient to defray the ordinary and strictly appropriate expenses of such an institution.

I have observed that large annual incomes in corporate bodies almost invariably lead to wasteful extravagance, and cause the institutions to become the prey of schemers, who, under the specious cloak of liberality, or of being what is called public-spirited citizens, have no hesitation in spending the money of other people, in order to gratify their own vanity, or to promote their private interests. Such persons pass so much of their time in the distraction of change from one place of popular importance to another, that they have no opportunity for observation and reflection, to gain intellect enough to comprehend the purpose of books of knowledge, and therefore can be of no service, but rather the means of disturbing the quiet duties of a public library. Let them find instruction in its volumes with thankfulness and modesty, yet beware of admitting them to even a part of its government, or they will be sure—unless the managers are wise and watchful—by some manœuvre to direct the whole. They are consequential spendthrifts, who, under the plea of patriotic improvement

and of ornamenting a city, misapply government taxes, and embarrass the funds of scientific, literary, and charitable, as well as moneyed institutions, over which, by popular artifice, they have gained a control. As a condition, therefore, of my will, let the managers and contributors join to exclude all such persons from the direction of the Library Company. It is from the quiet, unostentatious, and disinterested character of its directors, and of their management, that I have drawn the motives which induced me to choose the Philadelphia Library Company as the heir to my estate; and I would add a very influential consideration, that, having always conducted its affairs with prudence and foresight, it has never, by living beyond its means, in collecting more books than it has room for, been brought to the disgraceful pauper condition of those institutions which are constantly begging for thousands, and drawing upon the public purse by fairs and lotteries, in order to erect splendid buildings, or to pay debts rashly and inconsiderately incurred.

Second. I have in my will limited the extent of the lot to be purchased for the library building, as well as its locality; but as I desire that it shall have not only strength, durability, and accommodation, but also be of sufficient magnitude for any future or contingent, but not an ambitious or competing, increase of the library; in order to prevent, if possible, its being torn down in twenty years, and the lot sold at a speculative profit to suit the hyperbole of the times, I authorize and allow

my executor, under a broad and thoughtful foresight, to increase the size of the lot, and select any situation he may deem most expedient, without regard to any provision of my will or codicils. I know that an ostentatious library, to keep up with the progress of our country, collecting too many books, may be like an avaricious man who accumulates money to the ruin of both his modesty and his intellect. But I have a forlorn hope that the mind may yet be improved beyond a patronage or even a toleration of those crowds of graver or more puerile fictionists who mislead the idle, and of those garbling compilers who overlook or corrupt the truth of fuller and more useful works by purloining from their pages, in attempting to abbreviate and render them popular for their own advantage.

Third. I have given the copyrights of all my works to the Library Company, and I will and direct that they shall, for the next half century, publish every ten years (and earlier and oftener if called for) an edition of five hundred copies of any or of all of them, so that they shall always have on hand a number sufficient to supply any demand which may be made for any or either of them, at a price not exceeding the cost of publication. I leave additions and corrections in the printer's copies, preparatory to a subsequent edition which I imperatively require to be published exactly as they are left. The original parts of them have been written *without assistance*, and I wish to be alone responsible for all the faults of

thought, division, definition, and style, and of my corrected orthography, as I consider it.

An editor sometimes joins himself to a work by a supposed emendation of it. Let him in a book of his own justly blame what he pleases in mine, but not attempt to suit it to any future times and manners. Every writing should have its own times and manners. Let him prevent not imagine typographical errors; let him strive to improve my spelling only when the world corrects its own redundancies, and confusions on that point. In our important faults it is bad morality, even in science and literature, to try to escape the charge of errors by turning them over to others for correction.

Fourth. In order to insure, as far as is in my power, the application of the various devises and bequests which I have made for the use and benefit of the Library Company, in accordance with my wishes and directions, I hereby devise, direct, will, and declare that the whole and every part of my estate, real and personal, given or devised for the use and benefit of the said Library Company, and all the books and furniture purchased by them with the income and proceeds thereof, shall be taken and held by them (whenever the same by the provisions of my will, or of any codicil thereto, shall come into their possession, and become subject to their control), as trustees, for the uses, objects, trusts, and purposes in my said will, and any codicil thereto mentioned and expressed; and if the said Library Company shall in any respect violate or omit to comply with any of the provi-

sions, conditions, or directions, regulations, or restrictions, therein contained, then I will and direct that the Pennsylvania Company for Insurances on Lives and Granting Annuities, shall and may (or if they omit, neglect, or refuse so to do any citizen of the city of Philadelphia) apply to the proper courts of this Commonwealth to compel the said Library Company to comply with the provisions of my said will and codicils, or to remove them from the said trusts, and transfer the whole real and personal estate aforesaid, including the library building, and all the books and furniture belonging to the Ridgway Branch of the Philadelphia Library, unto the said Pennsylvania Company for Insurances on Lives and Granting Annuities, or if they shall neglect or refuse to accept this trust, to some other trust company of the city of Philadelphia, who shall take and hold the whole of the said estates, real and personal, library building, books, and furniture aforesaid, in trust to collect and receive the whole income thereof, and apply the same to the uses, objects, and purposes of my said will and codicils thereof; permitting, however, if in their sole discretion they shall think proper so to do, but not otherwise, the said Philadelphia Library Company to occupy the library building, and to take charge of the books, &c., of the Ridgway Branch thereof; provided they shall do so under the absolute direction and control of the new trustees, who shall strictly supervise and entirely control and direct all the expenditures of my estate in relation thereto; and who may, at any time, remove

them from the said charge, if the Library Company shall not submit and conform to such control and direction.

Fifth. If at any time Mr. Thomas Craven should take out letters testamentary to my estate, I will and direct that the amount of the annuity heretofore given him, shall be credited to my estate, and deducted from the commissions to which he will be by law annually entitled; and if those annual commissions should not equal the amount of such annuity, it shall be taken and considered as full payment thereof.

Sixth. I desire to express still more emphatically than I have yet done my wish and direction that the Library Company shall never make any efforts to rival the other libraries of America or of Europe in the mere number of volumes they contain. If the amount of books in the Philadelphia Library is simply recorded in its catalogue, it will be sufficient for every useful purpose; and whatever its number may be, it need not be held in the gloom of discontent at its inferiority to others, nor in a prideful exultation at its excess above them. Let it rest in a modest contentment in the useful quality of its volumes for the benefit, not the amusement alone of the public, nor let it over an ambitious store of inferior printed paper, flap its flimsy leaves, and crow out the highest number of worthless books. Let it be a favor for the eminent works of fiction to be found upon its shelves; but let it not keep cushioned seats for time-wasting and lounging readers, nor places for every-day novels, mind-

tainting reviews, controversial politics, scribblings of poetry and prose, biographies of unknown names, nor for those teachers of disjointed thinking, the daily newspapers, except, perhaps, for reference to support, since such an authority could never prove the authentic date of an event. In short, let the managers think only of the intrinsic value of additions to their shelves; for I hope (yet fearfully) that the streams flowing into the library will be clear, pure, and deep, diffusing healthy, truthful, and valuable information throughout the community, and not to be overborne by a common flood of cotemporary literature that may sweep off the firm foundations of knowledge, and leave no high places for a useful intellect to rest upon, to extend its bounties, and to be secure.

To assist in accomplishing the purposes of instruction above declared, let the contributors strive to elect to the management, if they can be found, at least one or two persons of *general knowledge*, men of more than common college and high-school education, with broad observation, reflection, and taste, and liberal thoughts; not sectarian to any of the professions, nor to the gains of trade and speculation, but those who have been called "men of good choice," and who may have wider views in government and selection than are commonly taken by the conventional and popular character of most public beneficiaries; recollecting not only there is safety in the multitude and agreement of counsel, but that wisdom, too, should there be found which will insure safety in

giving the broadest intellect with its widest compass the opportunity to enlighten, to caution, and to extend the capacity of those whose occasions or means or disposition may have prevented their thinking it necessary to go beyond the self-satisfied character of a majority.

In witness whereof I have hereunto set my hand and seal, this eighteenth day of April, An. Dom. eighteen hundred and sixty-seven (1867).

(Signed) JAMES RUSH. [SEAL.]

Signed, sealed, published, and declared by the above named Dr. James Rush, as and for a codicil to his last will and testament, in our presence, who, in his presence and in presence of each at his request, have hereunto set our hands as witnessess thereto.

J. S. FARMER, April 18th, 1867.

R. S. HUNTER, April 18th, 1867.

LAST CODICIL.

I, James Rush, do make this codicil to my last will and testament. For strong and sufficient reasons I hereby absolutely revoke all legacies, annuities and bequests given in my will and testament, or in any codicil thereto, unto Benjamin Rush, son of my brother Richard Rush, and Robert and Julia Manners, children of my sister Mary Manners.

Witness my hand and seal this twelfth day of April, A. D. 1869.

(Signed) JAMES RUSH

WILLIAM F. JUDSON, J. S. FARMER, and R. S. HUNTER, the subscribing witnesses to the foregoing last will of JAMES RUSH, M.D., deceased, sworn May 31st, 1869.

JOHN H. CAMPBELL,
Dep. Register.

J. S. FARMER and RICHARD S. HUNTER, the subscribing witnesses to the foregoing first and second codicils to the last will of JAMES RUSH, M.D., deceased, sworn May 31st, 1869.

JOHN H. CAMPBELL,
Dep. Register.

WILLIAM F. JUDSON and J. S. FARMER, sworn May 31st, 1869, as to the signature of JAMES RUSH, M.D., the testator above named, and appended to the third codicil to his last will.

JOHN H. CAMPBELL,
Dep. Register.

HENRY J. WILLIAMS, the executor within named, sworn May 31st, 1869, and letters testamentary granted unto him.

JOHN H. CAMPBELL,
Dep. Register.

June. A.D. 1869.

Questions submitted to Judge Strong by Mr. Williams.

1. Have the Library any interest in or control over this devise until they have accepted the provisions of the will?

2. Does not the direction (page 4), to erect the Building "according to plans, etc., which I shall hereafter make; but "if I should not make or leave any such plans, directions, "or specifications, then to build the same according to his "best judgment and to the views I have expressed to him," require the Executor to follow directions given *verbally* within a month of his decease, or at least justify him in doing so; those directions referring only to the *mode* and *place* of the erection of the Building, and not at all to the gift or devise?

3. Does not the surplus after the building is erected and paid for, and a fund laid aside for the annuities, belong to the Library, or is it *absolutely* obligatory on the Executor to spend, whether *necessary* or not, the whole of the estate, except the annuity fund, on the building?

4. Dr. Rush in his lifetime having directed Mr. Williams and Mr. Craven to purchase the lot on Christian and Carpenter Streets, and they having taken from the owner a signed contract to sell this property to Dr. Rush and paid $1000 on account of the purchase-money, which purchase and payment were both distinctly approved by him, is not the Executor required to complete, or, at least, is he not justified under his power in completing the purchase and paying the consideration-money, he thinking it in every way *expedient* to do so?

5. Is there any thing in Dr. Rush's will to prevent the Library from retaining their present building or procuring some other one for the reception of lighter literature and

for the convenience of the members, if the managers should think proper to do so; paying for it, of course, from the Library's own funds, and not from Dr. Rush's Estate?

6. The will (page 4) requiring the Executor to erect the building according to *his best judgment*, and authorizing and allowing him to increase the size of the lot and select any situation *he may deem most expedient*, without regard to any provision of the will or codicils; will a Court of Equity control the Executor in the choice of the lot, unless it was a violation of the will of the testator, or of his express and decided verbal directions?

Will they interfere when the positive directions of the testator and the judgment of the Executor are both directly in favor of the lot at Christian and Carpenter Streets, the only objection to which is its remoteness by a few squares from the most favored locations?

Opinion of Judge Strong.

Henry D. Williams. Esq:

Dear Sir

I have examined the Will of Dr: Rush, at your request, and I am now prepared to answer the questions you propose.

Quest. I am of opinion that until the Philadelphia Library Company shall have accepted the provisions of the Will respecting the devise for their benefit, they have no control over it, or over your action as Trustee. It is indeed desirable that you should know at an early day, whether the Library Company intend to take advantage of the provisions of the Will in their favor, for that knowledge will might properly have some influence upon your action, If the building to be erected is not to be accepted on the conditions prescribed, and if it shall become your duty to found and endow another library it may well be considered whether a smaller sum

should not be devoted to the building, and a larger to the endowment, But, until the provisions of the will have been accepted by the Library company, they have no right to interfere with the discretion vested in you as Trustee.

Second. I am also of opinion that the direction, given on the fourth printed page of the Will, to erect the building, and provide for its extension according to plans, directions and specifications the Testator should thereafter make or give, or, in case he should make or leave no such plans &c:, according to your best judgment, and to the views, which had been expressed to you by him, taken in connection with the fourth section of the second codicil, fully justifies you in following the directions given to you verbally, within a month of Dr: Rush's decease, I assume of course that those directions relate only to the mode of erection, or to the place for erecting the building, — I think an uncontrolled discretion is vested in you in these particulars. While I am not prepared to say that you are legally bound by any verbal directions given by Dr:

Rush within a month of his death, you are at liberty to follow them, and considering the language of the Will, they are entitled to weight in your consideration.

Third. The surplus remaining after the building shall have been erected and paid for, and after a sufficient fund shall have been set apart for the annuities, will belong, under the Will, to the Library Company, if they accept the gift on the conditions prescribed. After reflection, I am of opinion that you are not required to expend the whole estate (except the annuity fund) on the building, whether such expenditure be necessary or not. It appears from the first clause of the second codicil that Dr. Rush contemplated a legitimate increase of the library and payment of current expenses.

This is inconsistent with an expenditure of all the estate, (except the annuity fund) in erecting the building. The annuities may not fall in for years, and if they do not, there will be no fund for current expenses, and none for the increase of the library, unless a portion of the estate re-

main unexpended beyond the annuity fund.

Fourth. I have not before me the contract for the purchase of the lots on Christian and Carpenter Streets, But if the contract for the purchase was made by the direction of Dr. Rush and was signed by the vendor, and a payment was made on account, it is binding upon you as Executor, and it is your duty to complete the purchase, and pay the consideration, I think such is your legal liability. But if not, certainly you are justified under the will in such a course, especially if you think it expedient.

Fifth. The plan of Dr. Rush was to establish a branch of the Philadelphia Library, not to extinguish it, or to merge its existence in a new institution. It is not, I think, made a condition of the devise to the company that they shall not retain their present building, or procure some other for the convenience of the members and for the reception of such books as are intended to be excluded from the branch library. Of course such other building cannot be placed upon the lot, upon on which the building for the branch shall be erec-

-ted, nor can the funds derived from Dr: Rush's estate be appropriated for any other purposes than those specified in his will. They cannot be used for the purchase or erection of such other building, or for the purchase of such books, or for the current expenses of that part of the library of the company.

SIXTH. I have already said that the will confides to your a most absolute discretion in the choice of the lot for the building, I am confident a Court of Equity does not interfere with a discretion reposed, except in cases of clear abuse; where the Court can conclude that the choice of a power is acting in fraud of it. But when as in your case, the Trustee acts in accordance with his own best judgment, & in so doing follows the positive directions of the Testator, it would be altogether unprecedented for a court to interfere, and substitute its discretion for that invoked by the Will. The only objection now made to the lot at Christian & Carpenter is so far as I know that it is remote from the situation which the Library Company thinks most suitable. It was not their

judgment however upon which Dr: Rush rested. And it is by no means certain that the lot will not prove within a few years more conveniently located than any other. The institution is intended to be lasting; designated not merely for the present, but for the future.

I am very respectfully Yours

W. Strong —

June 15. 1869.

Since writing the above I have seen the contract for the lot between Christian and Carpenter Streets, and in view of it, I repeat what I said above I am of opinion that it is your duty to complete the purchase.

W. Strong —

June 16. 1869.

Letter of Judge Strong.

Henry J Williams Esq:

My Dear Sir

I have made some changes in your proposed answer to Mr: Yeatey's notes. They consist principally in omissions, as you will perceive in the revised draft I send you, I think it well not to say more than is necessary, I suggest, as you will perceive, a change in your mode of speaking of Dr: Rush's instructions.

As Executor, you are guided by the written Will, In the exercise of the discretion reposed in you by that Instrument, you may regard Dr: Rush's views and wishes orally expressed, but after all your judgment, however it may be made up, must be your guide in matters left

to

to your discretion. I advise a careful avoidance of any language which may create an impression that you are not free to follow your own judgment within the limits of the Will.

You will remember that Mr: McMurtrie and Mr: Meredith suggested the Courts might control your discretion if it is fettered by any oral promise or verbal direction.

The suggestion I think uncalled for and unfounded but it is best to avoid unnecessary reference to oral instructions given by the Testator.

I am very truly Yours

N. Strong

July 9. 1869.

PROVISIONS

OF THE

LAST WILL AND TESTAMENT

OF

DR. JAMES RUSH,

RELATING TO

THE LIBRARY COMPANY OF PHILADELPHIA.

THE PRIVATE BEQUESTS ARE OMITTED.

PHILADELPHIA:
COLLINS, PRINTER, 705 JAYNE STREET.
1869.

WILL OF JAMES RUSH, M. D.

Be it remembered, That I, JAMES RUSH, of the city of Philadelphia, M. D., do make this my last will and testament, hereby revoking all others by me heretofore made, in manner following—that is to say:—

I will and direct that all my just debts, which will be found very few in number and insignificant in amount, shall be paid by my executor as soon as possible.

It is my intention, by a codicil or codicils to this my will, to give considerable legacies, annuities, and devises to different persons, but as I desire to take some time for reflection on this subject, and as I have made up my mind as to the disposition of my residuary estate after the payment of these legacies, annuities, and devises; now, therefore, I do hereby give, bequeath, and devise my whole estate, real and personal, legal and equitable, whatsoever and wheresoever the same may be, unto my brother-in-law, HENRY J. WILLIAMS, of the city of Philadelphia, his heirs and assigns, to be held by him for and upon the following trusts and purposes, and for

and upon no other use, trust, or purpose whatever—that is to say:—

In trust, after paying, providing for, and complying with all legacies, annuities, gifts, bequests, and devises, declarations, and intentions which may be contained and expressed in any codicil or codicils to this, my last will and testament, which I may hereafter make (to be signed by me at the end thereof), whether the same be formally drawn or not; to have and to hold the whole residue and remainder of my estate, real and personal, whatsoever and wheresoever the same may be, for the following uses and purposes, viz:—

In trust, to select and purchase a lot of ground not less than one hundred and fifty feet square, situate between Fourth and Fifteenth and Spruce and Race Streets, in the city of Philadelphia, and thereon to erect a fire-proof building sufficiently large to accommodate and contain all the books of the Library Company of Philadelphia (whose library is now at the corner of Fifth and Library Street), and to provide for its future extension according to plans, directions, and specifications which I shall hereafter make or give; but if I should not make or leave any such plans, directions, or specifications, then to erect the same according to his best judgment and to the views which I have expressed to him. It is my wish that this building should be exceedingly substantial, completely fire-proof, without any large, lofty, or merely ornamental halls or lecture-rooms; the whole interior to be divided in such a way as to contain the

greatest number of books, to be well lighted, and so arranged as to be of easy and convenient access.

AND UPON THIS FURTHER TRUST, so soon as this building is completed and ready for occupation, then in trust to convey the same, with the lot of ground whereon it is erected, unto "The Library Company of Philadelphia" aforesaid, and their successors, for the uses and purposes of their library, and for no other use or purpose whatever.

Provided, however, that before any such conveyance shall be made to the said Library Company, they shall, either by an alteration in their charter, or in some other way satisfactory to my executor, bind themselves and their successors to conform to and comply with the following express conditions, and any others I may hereafter impose, under which they are to hold the said property and all other bequests and devises herein or hereafter given to them:—

First. That the said Library Company shall not cause, allow, or permit any lectures, public orations, or oral addresses or exhibitions of any kind to be delivered, given, or to take place on the said lot of ground, or in the said building; nor shall they cause, allow, or permit the formation of any museum, cabinet, gallery, or collection of natural history, statuary, sculpture, portraits, or paintings thereon or therein, nor shall they use, apply, or expend any funds, derived from me, or under my will or any codicil thereto, in procuring or defraying the expenses of any such lectures or exhibitions, public ora-

tions, or oral addresses, or in the establishment or support of or for additions to any such museum, cabinet, gallery or collection, painting, or portraits (and especially that of the testator) on the said lot and in the said building or elsewhere.

These are objects foreign to and inconsistent with the legitimate purposes of a public library, and it is only for the preservation, extension, and free and convenient use of such a library, without any ambitious or pretentious display, that it is desired to make provision.

Second. That all the accounts of the receipts and expenditures from the estates aforesaid, real and personal, shall be kept separate and distinct from all other accounts of the said Library Company, and shall all be headed and kept as the accounts of "THE RIDGWAY BRANCH OF THE LIBRARY COMPANY OF PHILADELPHIA," so that it may be always easily and certainly ascertained whether the application of those estates and the income derived therefrom has been in accordance with the provisions of this my will.

And I further will, direct, bequeath, and devise that whenever the said building shall have been completed and transferred to the said Library Company, and the preliminary conditions complied with, then my said executor shall assign, transfer, and convey, by one or more deeds and instruments, all the rest and remainder of my residuary estate not laid out and expended in the purchase of the lot and the construction of the building aforesaid, and in the legal and customary charges and

expenses, unto the said Library Company, to be held and used by them and their successors for the following uses, trusts, and purposes:—

First. In trust to keep the whole of the real estate granted and conveyed to them by my executor, in good order and repair, and to make from time to time such additions to the library building as may be found necessary for the extension and preservation and convenient use of the said library and all additions thereto.

Second. In trust, after paying all necessary taxes, charges, and expenses incident to the said property, to set aside annually ten per cent. of the clear net income, to form a contingent fund, to be invested, and the interest added to the principal, which fund, or so much thereof as may be required, shall be applied:—

First. To build upon, improve, alter, and renew any lands and tenements hereby devised to the said Company, so as to increase the income derived therefrom.

Second. To make good and replace any losses from the failure of any investments made of or from the property hereby bequeathed for the said Company; and,

Third. Whenever the said contingent fund shall amount to $30,000, then to pay over and apply the whole surplus beyond the said $30,000 for the general purposes to which the income of this residuary estate is herein directed to be applied.

Third. In trust to pay all necessary salaries of the librarian and his assistants, and the expenses of binding and preserving the books of the whole library, making

cheap catalogues, and all charges incident to its care and management. The said library is to be kept open from nine o'clock A. M. until at or near sunset, except on Sundays and holidays.

Fourth. And in trust, after complying with and fulfilling the previous trusts, and purposes hereinbefore contained and expressed, to apply the remainder or surplus of the said net annual income, or so much thereof as may be necessary or desirable, to the increase and extension of the said library.

But I direct that no portion of my real estate aforesaid shall be sold by the Library Company for ten years after my death, nor then, unless it be absolutely necessary for the purposes of this trust, even if additional income should be derived therefrom; and in no case, unless the said sales are sanctioned by a decree of the Orphans' Court or a court of equity, which shall decide such sales are not in contravention of the spirit of this my will.

And in order to enable my executor to carry out the directions of this my will, I hereby authorize and empower him to grant, bargain, and sell any part or parts of my real estate, at public or private sale, for any price or consideration, with any restrictions, reservations, covenants, or conditions, for cash or on credit, taking security on the premises for the balance of the purchase moneys; or to let on ground rent, mortgage, exchange, or make partition of the same, or any part or parts thereof; and to seal, execute, and deliver all deeds, conveyances, mortgages, assurances, or other instruments,

necessary for the purposes aforesaid, without any obligation on the purchaser or purchasers to see to or be responsible for the application of the purchase money or other consideration, or for the propriety of the exercise of this power.

And I further will, devise, and direct that all investments if any should be made by my executor, and all those which may at any time hereafter be made by the said Library Company from the principal or income of my said estate shall be in ground rents or other real estate in the State of Pennsylvania, or in bonds and mortgages upon property within the said State, or in loans of the said State, or of the United States; and lastly, I hereby appoint my brother-in-law, Henry J. Williams, of the city of Philadelphia, executor of this my last will and testament.

In witness whereof I have hereunto set my hand and seal this 26th day of February, A. D. eighteen hundred and sixty, 1860.

(Signed) JAMES RUSH.

Witnesses—Wm. F. Judson, J. S. Farmer,
R. S. Hunter, J. S. Farmer.

October 16, '65.

FIRST CODICIL.

Be it remembered, That I, JAMES RUSH, of the city of Philadelphia, M. D., do make this codicil to my last will and testament, dated the twenty-sixth day of February, A. D. eighteen hundred and sixty (1860), in manner following—that is to say:—

Whereas, By my said last will and testament, I have provided that the bequests and devises to the Library Company of Philadelphia are to be held under the conditions and restrictions therein contained, and any others which I might thereafter impose; now, therefore, in accordance with, and in execution of that provision, I add and impose the following conditions, restrictions, and directions:—

First. One of my objects in giving my residuary estate for the use of the said Library Company was to express my respect and regard for my father-in-law, the late Jacob Ridgway, and my affection for and gratitude to his daughter, Phœbe Anne Rush, by erecting to their memories a monument which I hope will prove more durable than any other grateful record I could make, and be infinitely more useful to the community. As it was from them I derived the greater part of my property, which (under the special and prudent management of faithful and trustworthy agents) has enabled me to devote happily, and undisturbed, the latter part of

my life to pursuits of scientific inquiry, which I have designed to be more beneficial than the more common enjoyment of an ample fortune, it is both just and proper that I should thus employ it, the more especially as Mrs. Rush had led me to believe that if she had survived me, she would have applied it to a similar purpose. Now, in order to carry out this intention in a public and permanent form, I direct my executor to have a marble slab, with the following inscription, on a plain ground, with a border of simple moulding, without any surrounding ornaments, placed and maintained on some appropriate part of one of the interior rooms of the new library building, in which my private library and other personal effects are to be preserved,

THE RIDGWAY BRANCH
OF THE
PHILADELPHIA LIBRARY.
A MONUMENT TO THE MEMORY OF
JACOB RIDGWAY
AND OF HIS DAUGHTER
MRS. PHŒBE ANNE RUSH.

Second. I direct my executor to have inserted in the act of Assembly which will be required to carry out the provisions of my will and codicils, clauses enacting—

First. That not more than one-fourth of the directors of the library shall belong to any one of the three learned professions, of law, theology, or medicine. This clause is, however, not intended to exclude any of the present members from re-election.

Second. That the number of shares in the library shall be limited to those actually issued at the time of my death. But the managers, by their by-laws, shall have the authority to allow any respectable person depositing an amount and paying an annual sum to be fixed by the Board of Managers, to have the full and free use of the library, as completely as if they were shareholders.

Third. That the library shall not connect themselves with any other body, corporate or politic; my residuary estate will form a large fund for the use of the library, and I wish them to be free from every inducement to go beyond what I consider the legitimate objects of a library company.

Third. I will add that my reasons for choosing the Philadelphia Library Company for my residuary legatee and devisee are because it has always been conducted quietly and unobtrusively, steadily pursuing the appropriate objects for which such libraries were established, keeping entirely aloof from the excitement of politics and of other means whereby public bodies so frequently seek to obtain an evanescent and mischievous notoriety, and because during my early life I derived great pleasure and advantage from the use of its books, and from the readiness and civility with which they were always furnished me.

Fourth. I understand that the Managers of Library Company have never applied any of its funds to defray

the expenses of the very simple refreshments of which they are accustomed to partake at the monthly meetings of the board, but have invariably paid them from their own personal means. I highly approve of this course, which I fear is not very usual, and in order that their example may be followed by their successors, I direct that no part of the funds of the Ridgway Branch of the Phildelphia Library shall ever be used or expended in providing refreshments, lunches (so called), feasts, or entertainments for managers, visitors, shareholders, or for any other persons whatever.

Fifth. I do not wish that any work should be excluded from the library on account of its difference from the ordinary or conventional opinions on the subjects of science, government, theology, morals, or medicine, provided it contains neither ribaldry nor indecency. Temperate, sincere, and intelligent inquiry and discussion are only to be dreaded by the advocates of error. The truth need not fear them, nor do I wish the Ridgway Branch of the Philadelphia Library to be encumbered with the ephemeral biographies, novels, and works of fiction or amusement, newspapers or periodicals, which form so large a part of the current literature of the day. The great object of a public library is to bring within the reach of the reader and student works which private collections do not, and cannot, contain, and which in no other way could be accessible to the public. Its excellence will depend—not upon the

number of its volumes—but upon their intrinsic value, and I wish this principle to be carried out by the managers, who, I hope, will never be influenced by the too common ambition for mere numerical superiority.

Sixth. I give and bequeath all my pictures, my private library, my manuscripts, copyrights, and papers, and also those of my father, Dr. Benjamin Rush (in my possession) to the Library Company, to be by them placed in a room in the new building, and there safely kept. The books may be used as the other books of the Library Company, but this room is not to be opened to gratify idle or objectless curiosity.

Seventh. I will and direct that the building to be erected for the Philadelphia Library Company, under the provisions of my will, shall have a basement story, of a height not less than eight feet six inches above the level of the pavement at its front, leaving the height of such basement in the rear to depend upon the grade for the drainage of the lot. The entrance to the front of the story, immediately above the basement, shall be by a broad flight of stone steps. Other entrances may be made in such places and manner as convenience or necessity may require.

Eighth. If the Philadelphia Library Company should omit or decline to accept my residuary estate on the terms and conditions in my will and codicils contained, or fail to comply with any of the preliminary stipula-

tions and directions therein mentioned, then I give and devise the whole residue of my estate, real and personal, whatsoever and wheresoever the same may be, after paying and securing all annuities, bequests, legacies and devises, other than those to the said Library Company in this, or any future codicil contained, unto HENRY J. WILLIAMS, my executor, in my said last will named, his heirs, executors and administrators in trust therewith, to found and endow a public library entirely distinct from and independent of the Philadelphia Library Company, to be named and called the Ridgway Library, under the rules, regulations, conditions and stipulations in my said last will, and the codicils thereto expressed and contained. I wish that the greater part of my estate may be spent in completing the new library building. The annuities as they expire and fall into my residuary estate will be amply sufficient for all the legitimate purposes of a library.

Ninth. By my last will and testament hereinbefore referred to (dated February 26, 1860), I have given, bequeathed, and devised my whole estate, real and personal, unto HENRY J. WILLIAMS, my executor, his heirs, executors, administrators, and assigns, in trust; in the first place to provide for, pay, and comply with all legacies, gifts, annuities, bequests and devises, declarations and intentions which may be contained or expressed in any codicil to the said last mentioned will and testament, which I might thereafter make, to be signed by

me at the end thereof, whether formally drawn or not; now, therefore, in pursuance of the above provision, I hereby direct, declare, bequeath, and devise as follows :—

Tenth. (Private bequest.)

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Eleventh. (Private bequest.)

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Twelfth. (Private bequest.)

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Thirteenth. (Private bequest.)

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Fourteenth. (Private bequest.)

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Fifteenth. (Private bequest.)

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Sixteenth. (Private bequest.)

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Seventeenth. (Private bequest.)

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Eighteenth. (Private bequest.)

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Nineteenth. (Private bequest.)

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Twentieth. (Private bequest.)

* * * * * * * *

Twenty-First. (Private bequest.)

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Twenty-second. I will and direct that all legacy or collateral inheritance taxes chargeable upon the bequests, legacies, and annuities given or bequeathed by my last will and testament or by any codicil thereto, shall be paid from and out of my residuary estate, and that all the annuities therein and thereby given shall commence from the day of my death. I also will and direct that all the annuities which I have given, or may hereafter give to any married lady, shall be for their sole and separate use, freed from all debts, obligations, or control of their respective husbands; and that all the annuities which I have given to any female, married or single, or which I may hereafter give them, shall be payable to them personally, or to their own order or receipt, signed and dated not more than three months before the same falls or becomes due, and shall not be subject to any anticipation, lien, or incumbrance, nor to any transfer or assignment by their own act, or by the act or operation of law, or otherwise. And in case any of the said female annuitants shall attempt to alien, anticipate, encumber, or assign her annuity, or cause, or permit, or suffer, or procure it to be done, then and in that case, I authorize and empower my executor, in his discretion, to withhold the semi-annual payments thereof (which shall fall into and become part of my residuary estate), until the attempted alienation, anticipation, lien or encumbrance, transfer or assignment shall be cancelled, released, given up, and annulled. And I further will and direct that all the annuities which I have given, or which I may

hereafter give, shall, upon the expiration of the periods for which they were respectively given, fall into and become part of my residuary estate.

Twenty-third. I direct my executors to dispose of the perishable part of my furniture, but not to have any auction upon any part of my premises. I wish it sold as quietly as possible, and would prefer a private sale, even if it were not so productive. I also direct my executor to keep my residence, No. 1914 Chestnut Street, for at least two years, unless he can dispose of it at private sale for a price which, in his sole discretion, he may think reasonable. At the expiration of that time he may dispose of it as he may think best.

Twenty-fourth. I have given verbal directions to my executor to have my funeral as private as possible, without any of the ordinary external indications of mourning.

No invitations are to be sent, except to my *nearest* relations, and I specially desire that I may be buried in silence. If circumstances will permit it, I should be glad that the remains of the late Jacob Ridgway, of his daughter, my late wife, and of myself, should be removed to the new library building, when it is completed, and be placed in some spot within the outward limits of the building, under a plain and simple tablet. The library itself is intended for their monument, and I want none for myself. If, however, the parties interested in the ground in which my father-in-law is buried should object

to his removal, then I desire that my wife and myself may be placed in the new library building as above directed. The library will then be her monument, and I desire to lie by her side.

Twenty-fifth. And I further will and direct that if any of the devisees or legatees or annuitants herein named shall attempt, themselves, or aid, assist, or encourage others to question, dispute, litigate, or object to the validity or effect of any part or portion of my will, or any codicil thereto, or of any gift or devise therein mentioned, then, and in that case, all the clauses in my said will or any codicil thereto conferring any benefit upon the person or persons aforesaid shall stand and be revoked and annulled, and the same shall be paid and given over to the said Library Company.

Twenty-sixth. Events and circumstances occurring within the last six years have obliged me to make several changes in my will, and I should have preferred that all my testamentary dispositions should have appeared as a complete whole, instead of being contained in separate instruments; but at my age life is precarious, and were I to have them condensed, redrawn, and re-executed, the most important part of the whole might fail under the operation of the ill-conceived, inconvenient, and mischievous law (resulting from a narrow sectarian spirit) which avoids all gifts to literary or religious institutions made and witnessed within a calendar month of the termination of a testator's life, no matter what his

mental capacity may have been. To avoid the possibility of such a result, I must let it stand as it is, and add other provisions as they may occur to me.

Twenty-seventh. If any annuitant in any codicil to my last will named, whose residence is in the United States of America, shall leave this country after my death to remain either temporarily or permanently abroad, I will and direct that their respective annuities shall be suspended until their return; and the several half yearly payments becoming due during their absence shall fall into and become part of my residuary estate.

Twenty-eighth. I desire my executor to be allowed a commission of three per cent. upon the administration of my estate; and, in the case of the death of my brother-in-law, HENRY J. WILLIAMS, whom I have named as my executor in my last will, either before or after me, I nominate and appoint Colonel Alexander Biddle and Thomas Craven to be my executors in his room. They are not, however to assume the executorship, or be qualified therefor, until after his death, resignation, or refusal to act.

In witness whereof I have hereunto set my hand and seal this 16th day of May, An. Dom. eighteen hundred and sixty-six (1866).

(Signed) JAMES RUSH. [SEAL.]

Signed, sealed, published, and declared by Dr. JAMES RUSH above named, as and for a codicil to his last will

and testament, in our presence, who, in his presence and in presence of each other, at his request, have affixed our names as witnesses thereto.

J. S. Farmer, May 16, 1866.
Richard S. Hunter, May 16, 1866.

ADDITIONAL CODICIL.

Be it remembered, That I, James Rush, of the city of Philadelphia, M.D., do make this additional codicil to my last will and testament, dated the 26th day of February, A. D. (1860) eighteen hundred and sixty, in manner following—that is to say :—

First. I have given and devised the greater part of my estate to my executor for the purpose of erecting for the Library Company of Philadelphia a building not only large enough to contain their present books, but also their probable increase for many years to come. Now, as I do not desire that the Library Company shall have an income greater than is required to provide for the legitimate (not a competing) increase of the library and their current expenses (not to be so large as to invite extravagance and waste), for which purposes the sums to be set apart to secure the legacies and annuities given by my said will and testament will be sufficient, I hereby authorize and direct my said executor to expend the whole remainder of my estate in the purchase of a lot and the erection of the library building, construction of

book-cases, &c., leaving the said company only an income sufficient to defray the ordinary and strictly appropriate expenses of such an institution.

I have observed that large annual incomes in corporate bodies almost invariably lead to wasteful extravagance, and cause the institutions to become the prey of schemers, who, under the specious cloak of liberality, or of being what is called public-spirited citizens, have no hesitation in spending the money of other people, in order to gratify their own vanity, or to promote their private interests. Such persons pass so much of their time in the distraction of change from one place of popular importance to another, that they have no opportunity for observation and reflection, to gain intellect enough to comprehend the purpose of books of knowledge, and therefore can be of no service, but rather the means of disturbing the quiet duties of a public library. Let them find instruction in its volumes with thankfulness and modesty, yet beware of admitting them to even a part of its government, or they will be sure—unless the managers are wise and watchful—by some manœuvre to direct the whole. They are consequential spendthrifts, who, under the plea of patriotic improvement and of ornamenting a city, misapply government taxes, and embarrass the funds of scientific, literary, and charitable, as well as moneyed institutions, over which, by popular artifice, they have gained a control. As a condition, therefore, of my will, let the managers and contributors join to exclude all such persons from the direction of the

Library Company. It is from the quiet, unostentatious, and disinterested character of its directors, and of their management, that I have drawn the motives which induced me to choose the Philadelphia Library Company as the heir to my estate; and I would add a very influential consideration, that, having always conducted its affairs with prudence and foresight, it has never, by living beyond its means, in collecting more books than it has room for, been brought to the disgraceful pauper condition of those institutions which are constantly begging for thousands, and drawing upon the public purse by fairs and lotteries, in order to erect splendid buildings, or to pay debts rashly and inconsiderately incurred.

Second. I have in my will limited the extent of the lot to be purchased for the library building, as well as its locality; but as I desire that it shall have not only strength, durability, and accommodation, but also be of sufficient magnitude for any future or contingent, but not an ambitious or competing, increase of the library; in order to prevent, if possible, its being torn down in twenty years, and the lot sold at a speculative profit to suit the hyperbole of the times, I authorize and allow my executor, under a broad and thoughtful foresight, to increase the size of the lot, and select any situation he may deem most expedient, without regard to any provision of my will or codicils. I know that an ostentatious library, to keep up with the progress of our country, collecting too many books, may be like an avaricious

man who accumulates money to the ruin of both his modesty and his intellect. But I have a forlorn hope that the mind may yet be improved beyond a patronage or even a toleration of those crowds of graver or more puerile fictionists who mislead the idle, and of those garbling compilers who overlook or corrupt the truth of fuller and more useful works by purloining from their pages, in attempting to abbreviate and render them popular for their own advantage.

Third. I have given the copyrights of all my works to the Library Company, and I will and direct that they shall, for the next half century, publish every ten years (and earlier and oftener if called for) an edition of five hundred copies of any or of all of them, so that they shall always have on hand a number sufficient to supply any demand which may be made for any or either of them, at a price not exceeding the cost of publication. I leave additions and corrections in the printer's copies, preparatory to a subsequent edition which I imperatively require to be published exactly as they are left. The original parts of them have been written *without assistance*, and I wish to be alone responsible for all the faults of thought, division, definition, and style, and of my corrected orthography, as I consider it.

An editor sometimes joins himself to a work by a supposed emendation of it. Let him in a book of his own justly blame what he pleases in mine, but not attempt to suit it to any future times and manners.

Every writing should have its own times and manners. Let him prevent not imagine typographical errors; let him strive to improve my spelling only when the world corrects its own redundancies, and confusions on that point. In our important faults it is bad morality, even in science and literature, to try to escape the charge of errors by turning them over to others for correction.

Fourth. In order to insure, as far as is in my power, the application of the various devises and bequests which I have made for the use and benefit of the Library Company, in accordance with my wishes and directions, I hereby devise, direct, will, and declare that the whole and every part of my estate, real and personal, given or devised for the use and benefit of the said Library Company, and all the books and furniture purchased by them with the income and proceeds thereof, shall be taken and held by them (whenever the same by the provisions of my will, or of any codicil thereto, shall come into their possession, and become subject to their control), as trustees, for the uses, objects, trusts, and purposes in my said will, and any codicil thereto mentioned and expressed; and if the said Library Company shall in any respect violate or omit to comply with any of the provisions, conditions, or directions, regulations, or restrictions, therein contained, then I will and direct that the Pennsylvania Company for Insurances on Lives and Granting Annuities, shall and may (or if they omit, neglect, or refuse so to do any citizen of the city of Philadelphia)

apply to the proper courts of this Commonwealth to compel the said Library Company to comply with the provisions of my said will and codicils, or to remove them from the said trusts, and transfer the whole real and personal estate aforesaid, including the library building, and all the books and furniture belonging to the Ridgway Branch of the Philadelphia Library, unto the said Pennsylvania Company for Insurances on Lives and Granting Annuities, or if they shall neglect or refuse to accept this trust, to some other trust company of the city of Philadelphia, who shall take and hold the whole of the said estates, real and personal, library building, books, and furniture aforesaid, in trust to collect and receive the whole income thereof, and apply the same to the uses, objects, and purposes of my said will and codicils thereof; permitting, however, if in their sole discretion they shall think proper so to do, but not otherwise, the said Philadelphia Library Company to occupy the library building, and to take charge of the books, &c., of the Ridgway Branch thereof; provided they shall do so under the absolute direction and control of the new trustees, who shall strictly supervise and entirely control and direct all the expenditures of my estate in relation thereto; and who may, at any time, remove them from the said charge, if the Library Company shall not submit and conform to such control and direction.

Fifth. If at any time Mr. Thomas Craven should take out letters testamentary to my estate, I will and direct

that the amount of the annuity heretofore given him, shall be credited to my estate, and deducted from the commissions to which he will be by law annually entitled; and if those annual commissions should not equal the amount of such annuity, it shall be taken and considered as full payment thereof.

Sixth. I desire to express still more emphatically than I have yet done my wish and direction that the Library Company shall never make any efforts to rival the other libraries of America or of Europe in the mere number of volumes they contain. If the amount of books in the Philadelphia Library is simply recorded in its catalogue, it will be sufficient for every useful purpose; and whatever its number may be, it need not be held in the gloom of discontent at its inferiority to others, nor in a prideful exultation at its excess above them. Let it rest in a modest contentment in the useful quality of its volumes for the benefit, not the amusement alone of the public, nor let it over an ambitious store of inferior printed paper, flap its flimsy leaves, and crow out the highest number of worthless books. Let it be a favor for the eminent works of fiction to be found upon its shelves; but let it not keep cushioned seats for time-wasting and lounging readers, nor places for every-day novels, mind-tainting reviews, controversial politics, scribblings of poetry and prose, biographies of unknown names, nor for those teachers of disjointed thinking, the daily newspapers, except, perhaps, for reference to support, since

such an authority could never prove the authentic date of an event. In short, let the managers think only of the intrinsic value of additions to their shelves; for I hope (yet fearfully) that the streams flowing into the library will be clear, pure, and deep, diffusing healthy, truthful, and valuable information throughout the community, and not to be overborne by a common flood of cotemporary literature that may sweep off the firm foundations of knowledge, and leave no high places for a useful intellect to rest upon, to extend its bounties, and to be secure.

To assist in accomplishing the purposes of instruction above declared, let the contributors strive to elect to the management, if they can be found, at least one or two persons of *general knowledge*, men of more than common college and high-school education, with broad observation, reflection, and taste, and liberal thoughts; not sectarian to any of the professions, nor to the gains of trade and speculation, but those who have been called "men of good choice," and who may have wider views in government and selection than are commonly taken by the conventional and popular character of most public beneficiaries; recollecting not only there is safety in the multitude and agreement of counsel, but that wisdom, too, should there be found which will insure safety in giving the broadest intellect with its widest compass the opportunity to enlighten, to caution, and to extend the capacity of those whose occasions or means or disposition

may have prevented their thinking it necessary to go beyond the self-satisfied character of a majority.

In witness whereof I have hereunto set my hand and seal, this eighteenth day of April, An. Dom. eighteen hundred and sixty-seven (1867).

(Signed) JAMES RUSH. [SEAL.]

Signed, sealed, published, and declared by the above named Dr. James Rush, as and for a codicil to his last will and testament, in our presence, who, in his presence and in presence of each at his request, have hereunto set our hands as witnessess thereto.

J. S. FARMER, April 18th, 1867.
R. S. HUNTER, April 18th, 1867.

LAST CODICIL.

(Relating to private bequests.)

Witness my hand and seal this twelfth day of April, A. D. 1869.

(Signed) JAMES RUSH.

WILLIAM F. JUDSON, J. S. FARMER, and R. S. HUNTER, the subscribing witnesses to the foregoing last will of JAMES RUSH, M.D., deceased, sworn May 31st, 1869.

JOHN H. CAMPBELL,
Dep. Register.

J. S. FARMER and RICHARD S. HUNTER, the subscribing witnesses to the foregoing first and second codicils to the last will of JAMES RUSH, M.D., deceased, sworn May 31st, 1869.

JOHN H. CAMPBELL,
Dep. Register.

WILLIAM F. JUDSON and J. S. FARMER, sworn May 31st, 1869, as to the signature of JAMES RUSH, M.D., the testator above named, and appended to the third codicil to his last will.

JOHN H. CAMPBELL,
Dep. Register.

HENRY J. WILLIAMS, the executor within named, sworn May 31st, 1869, and letters testamentary granted unto him.

JOHN H. CAMPBELL,
Dep. Register.

EVENING BULLETIN.

Wednesday, June 30, 1869.

☞ Persons leaving the city for the summer, and wishing to have the EVENING BULLETIN sent to them, will please send their address to the office. Price by mail, 75 cents per month.

DISJOINTED THINKING.

The stockholders of the Library Company of Philadelphia have had their thinking terribly dislocated by the bequest of the late Dr. Rush. Yesterday, this venerable constituency was convened to cogitate over the question of accepting the trust of a million dollars, confided to them by Dr. Rush, under conditions so complicated, and of such doubtful expedience and practicability, that the longer the cogitations continued, the more confused became the ideas of the devisees.

It was a grave and reverend assemblage of the ancients of Philadelphia. Wise judges in quantities, learned lawyers by scores, reverend divines, solemn doctors, dusty scholastics, the "solid men" of Philadelphia, a few merchants, fewer leading mechanics, and a very few "teachers of disjointed thinking." The gravest decorum prevailed, and the front rows of the elders as they sat, each like Jacob of old, "leaning on the head of his staff," carried us back to our early days in Arch street or Orange street meetings.

It may seem strange, indeed, that a bequest of a million dollars to a library company should be looked at with such cool deliberation; but the question had not long been broached, before it became evident that all the traditional caution of ancient Philadelphia was fully aroused, and that there was to be a very sober balancing of the profit and loss of the transaction before it was decided upon. The judges and lawyers each took up his parable in turn, and contradicted the views of his "learned brother." Very disjointed, indeed, were the thoughts of the assembled wisdom of Philadelphia. Some, with anti-Christian bitterness, denounced the proposed site of the Library, as utterly out of the world. Others considered the location of no sort of consequence, because book-worms would find their way to their favorite food, no matter where it might be placed. Some, with easy arithmetical glibness, whittled down the bequest, by deductions of taxes, and annuities, and lots, and buildings, and other small items, until it was demonstrated that it would be a positive drain upon the present income of the Company. Others overhauled this arithmetic and showed that there would be a splendid endowment left, over and above all expenses. Learned counsel argued that the stockholders must accept or reject upon the spot. Other learned counsel put in their opinion that the time for action had not yet come. The longer the subject was discussed, the more muddled it became. One lawyer after another took his innings, and came out in fresh clouds of dust; and after two hours and a-half of eloquent, and—for such an assemblage—excited debate, the meeting adjourned to *think over it* for another three months. The few "teachers of disjointed thinking" looked on with keen and grim enjoyment, and felt that they were avenged.

While the bequest of Dr. Rush is undoubtedly so constructed as to present a perfect wilderness of tangled legal difficulties, it is evident that the one central difficulty is that of location. The neighborhood of Broad and Christian streets is, and will be, for a long time to come, a remote one, in reference to the centres of business, science and residence. With all the restrictions which Dr. Rush places upon the character of the library to be established, there can be no doubt that he designed it for general public use. Living, for all the latter years of his life, in total seclusion, it may well be doubted whether he appreciated, as he would have done otherwise, the importance of this question of location. And yet this question is definitely fixed, as his executor, Mr. Williams, emphatically declared at the meeting yesterday. If the Philadelphia Library Company accepts the trust, it must make up its mind to establish an auxiliary library at some central point, where current literature and the newspaper files may be easily reached by the people. If this can be done, then it is unquestionably best to accept the Rush trust and make it such a great library of reference as will attract the scholars of America to it as the literary centre of the United States.

The arithmetic of the argument is undoubtedly in favor of accepting the bequest. The estate is now worth over a million dollars. The only real deductions from this amount are for taxes and the building lot, amounting to about $240,000. Most of the property is in appreciating real estate, and, before the building is completed, there is every reason to believe that the estate will again have reached its present valuation of one million dollars, which will leave, after paying for the building, an ample and liberal endowment. The further reflections of the stockholders will probably bring them to the conclusion that, with all the peculiar conditions of Dr. Rush's bequest, the interests of the Library Company are altogether upon the side of its acceptance.

NOTICE.

Letters Testamentary on the Estate of Dr. James Rush, having been granted to the subscriber, all persons having claims against the said Estate, are requested to present them, and those indebted to make payment to THOMAS CRAVEN, No. 504 Minor street, the Agent for the Executor.

HENRY J. WILLIAMS,
Executor of Dr. J. Rush,
6t 712 Walnut street.

The Philadelphia Library.

To the Editor of the Evening Bulletin:—It is a lamentable fact that, as a general rule, stockholders take but little interest in the affairs of an institution until the time of danger, and then they find, sometimes too late for remedy, that the power given to the managers has not been wisely exercised. It is this indifference that makes doubtful the future of the Library Company; and it is for the purpose of endeavoring to excite the attention of the shareholders to examine the subject now in question, and which is so vital to the interests of the Company, that these views are presented.

The Library Company was established by Dr. Franklin and his associates in 1731. It procured the favor and patronage of the Proprietary Governors, who gave it a charter of incorporation in 1742. For the purpose of enlarging its sphere of usefulness, it was, in the year 1769, united with the Union Library Company, and thus obtained nearly three hundred new members, and at the present time it has about nine hundred and fifty shareholders; and to this number, at the outside, it must be forever limited if the bequest of Dr. Rush be accepted. Dr. Rush, by his will made in 1860, gives his residuary estate to his executor, Henry J. Williams, "in trust, to *select and purchase a lot of ground* not less than one hundred and fifty feet square, situate between Fourth and Fifth and Spruce and Race streets, in the city of Philadelphia, and thereon *to erect* a fire-proof building sufficiently large to accommodate and contain ALL the books of the Library Company of Philadelphia (whose library is *now* at the corner of Fifth and Library streets), &c." "AND UPON THIS FURTHER TRUST, so soon as this building is completed and ready for occupation, *then* in trust to convey the same, with the lot whereon it is erected, unto the Library Company of Philadelphia aforesaid, and their successors, for the use of *their* library, and for no other use or purpose whatever—*provided*," &c.; and here he recites the conditions upon which the Executor is permitted to make a conveyance. By a codicil to his will, dated May, 1867, he authorizes his Executor "to select any situation he may deem most expedient." In the same codicil, after declaring that his Executor shall erect a building "for the Library Company of Philadelphia, not only large enough to contain their *present* books, but also their probable increase for many years to come," he directs his Executor "to expend *the whole remainder* of my estate in the purchase of a lot and the erection of the library building, construction of book-cases, &c., leaving the said company only an income sufficient to defray the ordinary and strictly appropriate expenses of such an institution." It will thus be seen that all his estate, excepting legacies of annuities amounting in all to about $8,400 per annum, *must* be expended on the building, and that the interest on the annuities, as each one falls in, is all that is given for support of the library; that the expenditures are to be such as he requires, under heavy penalties, and for the purpose of exacting these penalties, the accounts of the Ridgway branch must be kept separate and distinct; that the main library must be supported from other sources, and as the annual dues of members at the present rate of $5 will only produce $4,750, this subscription must be increased, for the new and larger building will make heavier expenses. There are other restrictions not *now* necessary to be considered, because the time has not come for action, and the attempt to precipitate action at this time is almost unaccountable. The Executor, though invested with the right to select *any* location, insists upon a lot at Broad and Carpenter streets, which was agreed to be bought shortly before Dr. Rush's death, as was explained at the meeting of shareholders, and *which Dr. Rush never saw*. Nine-tenths of the shareholders are opposed to this location, and yet it is attempted to *buy* them by the large bequest. The Executor's duty is plain, not to make an effort to coerce acceptance at this time—but to proceed and erect the building; and *then*, and not till then, if the Legislature will make the necessary alterations in the charter, and the company will accept these changes, to convey it to the company. The Executor may rest assured that whatever may be the action *now*, there will be found *then* some prepared to reject the bequest and to endeavor to prevent such legislative action as is prescribed; and the right to accept or reject belongs to those who may be shareholders *then*, and not those who are so *now*.

Present action will not bind nor prevent future, and of a different kind; and certainly it is better to await the chapter of accidents, take all chances and see the building erected according to the Executor's will and pleasure, before it is determined to receive it, especially as nothing is gained by present acceptance. The fund of nearly $100,000, so long accumulating, the Building Fund, to which the late Mr. Fisher made a large contribution, must be surrendered and returned to the original donors; for law, as well as honor, will prevent it from being used for any other purpose than erecting a library building.

The resolutions to be voted upon by the stockholders on the 19th are:

Firstly—To accept the bequest.

Secondly—To retain the present collection of books in the present building.

Thirdly—To appoint a committee to consult with Dr. Rush's executor, and carry the resolutions into effect.

Fourthly—To return thanks; and

Fifthly—To unite the two first resolutions, so that they must stand or fall together.

The writer is of opinion that the provisions of the will are obligatory; that a branch of the Library cannot be maintained in its present location, and *the Executor has never said otherwise*, and while the acceptance would (or might) be binding, the second proposition would be nugatory and invalid. If those who presented these resolutions are sincere in their belief and purpose—if they think that a branch may be retained in its present location—there can be no objection to the fifth proposition. So that, whatever may be the vote on the first three, it is certainly safe to vote "aye" on the last. A negative vote on the others will only postpone action till the building is erected, when eyes and ears can help the judgment; though in case the negative should not prevail, an affirmative vote on the fifth resolution will be calculated to promote the interests of the Company and the harmony of its members.

A SHAREHOLDER.

EVENING BULLETIN.

Tuesday, October 19, 1869.

THE VOTE ON THE RUSH BEQUEST.—The scene which has transpired during the day, within the solemn and antiquated walls of the Philadelphia Library, has never been equalled in the annals of that institution for agitation and excitement. The characteristics of the respectable citizens forming its body of stockholders are well-known; they form the most exclusive, the most unworldly, the most introverted and retired circle of bookworms to be found in this or perhaps any other American city. They are respectable ghouls of literature, placidly feeding upon dead authors. No ordinary circumstance will bring them up into a standing posture, from that attitude resembling the letter Z, in which they are accustomed to bend over a book. To-day, however, they are treating themselves to a perfect debauch of excitement. They button-hole each other, they intrigue, they lobby, they canvass. White-headed elders of the Society of Friends, pale gentlemen from retired studies, reverend fogies and "oysters" who usually stay at home and transact their business with the library by means of staid old family servants, are present in person, alert, agitated and eager. It is like removing a large flat stone from a company of hard-shell gray beetles. Venerable grandsires who "never go out" are astonished to find themselves nose to nose with others of the same ilk, whom they have last met at youthful companies. Here at the library they mow and mumble and stare at each other, with now and then an involuntary prayer to the colossol bronze Minerva for wisdom in this heavy crisis. Under the blackened portrait of Thomas Penn the judges' table is set, canopied with the American flag. The ancients totter up and deliver their votes, suspiciously folded, to the white-headed, grave, signorial persons who are to compute them. The oldest family names in Philadelphia are whispered by those senile lips to the discreet ears of the judges as the ballots are shuffled in. The librarians are agitated and unquiet. The hours pass over, tolled by Cromwell's clock, and the musical chime, and the outside notes of the bell of Independence Hall, stealing into the seclusion through the ancient lattices. The day is lowering, and the croakers dejectedly croak, fearing lest their traditional liberties are being fatally and slowly voted away. How the ballot will go, no mortal can guess. The feeling of opposition to the Rush bequest, with its accompanying conditions, is evidently very strong; and the stockholders of the library, distracted between the natural desire of gain and the menace of all their favorite privileges and habitudes, are delivered to mental tortures such as have not lately entered into their peaceful lives. Meantime, far within, amongst those labyrinthine recesses that the noise of an election has never entered, a few of the ordinary habitués of the place still mope and read, unconscious of eternal distractions, as Protogenes painted in Rhodes when the conqueror was besieging it.

THE MORNING POST.—

WEDNESDAY, OCTOBER 20, 1869.

Yesterday the members of the Philadelphia Library Company voted upon the resolutions submitted at a meeting held some time since. Six hundred and sixty-nine shares of stock have been issued by the Library Company since it was founded, and for the first time in its history, the votes of nearly every surviving stockholder were brought out to decide whether the legacy bequeathed by will to the company by the late Dr. James Rush should be accepted.

The highest vote cast was upon the first resolution, being 591.

The resolutions voted upon were as follows:

Resolved, That the stockholders of the Library Company of Philadelphia do hereby accept the legacy of Dr. James Rush according to the terms expressed in his will.

Yeas.....298
Nays.....293

Majority for acceptance..... 5

Resolved, That so much of the present collection of books and other property of the company as may by the directors be deemed expedient shall be retained in the present or some other central position for general use and circulation.

Nays.....301
Yeas.....256

Majority against..... 45

Resolved, That a committee, to consist of three stockholders and three directors, shall be appointed for the purpose of consulting and advising with the executor of Dr. Rush, in carrying out the provisions of the will, in procuring such legislation as may be needed, and also for carrying into effect the second resolution, by taking measures for securing the erection of a fire-proof building for the reception of those parts of the library, so to be retained at such time and in such place as said committee may determine.

Nays.....362
Yeas.....213

Majority against..... 49

Resolved, That a copy of the foregoing resolutions be transmitted to Henry J. Williams, Esq., the executor of Dr. James Rush, as the acceptance of this company of the bequest made by his will, and that the letter transmitting the same shall acknowledge the high appreciation by the company of the confidence reposed in them by Dr. Rush, and of their cordial willingness to unite in carrying out in the most beneficial way his philanthropic intentions.

The above resolutions are those reported by the Joint Committee of Stockholders and Directors.

Nays.....293
Yeas.....268

Majority against..... 25

The following additional resolution was offered by Hon. Henry M. Phillips:

Resolved, That the acceptance of the stockholders of the Library Company of Philadelphia is upon the express provision that so much of the present collection of books and other property of the company as may by the directors, be deemed expedient, shall be retained id the present or some central position for general use and circulation.

Nays.....316
Ayes.....259

Majority against..... 57

It will be seen that by a very close vote

PHILADELPHIA LIBRARY.

THE RUSH LEGACY ACCEPTED UNCONDITIONALLY.

the legacy is accepted unconditionally. The contest was quite spirited during the day. Both sides claimed a victory, and it was not until after seven o'clock in the evening that the result was announced.

The Nature of the Bequest.

Some time ago the Library Company appointed a committee to consider the proposed bequest and its terms. They presented a report to the stockholders of that institution to the effect that the present cash value of the estate is $1,067,000; that the annual income, not including any rental of the mansion on Chestnut street, is a little above $40,000; the site purchased for the proposed library building is the lot of ground on Broad street, bounded by Christian, Carpenter and Thirteenth streets, being 300 feet on Broad street, by 527 feet deep on Christian and Carpenter streets. That the building will be of the Greek-Doric order of architecture, about 80 to 100 feet front by 140 to 160 feet in depth, with wings of 20 to 30 feet in width, and an opening in the centre of the edifice of 20 to 25 feet in width, for light and air.

One of the main points on the part of the committee was to ascertain from Mr. Williams, executor of Dr. Rush's estate, whether the question of the site was so open to discussion as that it might be changed to a different location within the limits originally selected by Dr. Rush.

His reply as to a charge of site was emphatically in the negative. He states that the lot was bought for the purpose by Dr. Rush himself for $130,000, and that he feels bound, in consequence thereof, to place the building thereon in order to comply with the directions of Dr. Rush.

As to the building itself, he says: That while the measurements were suggested to him by Dr. Rush, and accord with his present views, yet he is at liberty to change them, and will freely do so if, in his judgment, it shall be necessary. The material of the building will be either granite or white Ohio sandstone.

We think it may be assumed with great certainty that Mr. Williams will be induced, by the favorable action of the company, to adopt such plans and make such arrangements as will put up the proposed building at such cost as will leave about $300,000 for the payment of the annuities and the constitution of a fund for expenses and purchase of books.

When the annuities have all fallen in, and of course will be a work of time, the capital of the fund will be at least the amount above named; but it must be recollected that the estate consists mainly of real property, situated in the city of Philadelphia, and daily increasing in value by the growth of the city, so that a provision of $300,000, as the foundation, will soon be largely augmented.

Dr. Rush has undoubtedly had this in view when he provided so strictly against any hasty alienations of his real estate.

American and Gazette.

PHILADELPHIA:

WEDNESDAY, OCTOBER 20. 1869.

The Library and the Rush Bequest.

Never within our recollection has there been so great an excitement among the members of the Philadelphia Library as that which has just culminated in the vote of yesterday, deciding to unconditionally accept the bequest of Dr. Rush according to the terms of his will. Our columns have been open to and have contained the arguments upon both sides of this question, so that our readers should be well acquainted with its merits. Our own opinion is clearly adverse to that of the majority of the stockholders as expressed by the vote upon the fifth resolution, which was really the test of opinion in the matter; and we think time will demonstrate that it would have been wiser if that expression had been favorably indorsed.

The official announcement of the vote will be made at an adjourned meeting of the stockholders, to be held in the Library building to-morrow; but we presume the figures furnished to our reporter last evening to be correct, and as a matter of reference we republish the resolutions, with the vote upon each:

First. Resolved, That the stockholders of the Library Company of Philadelphia do hereby accept the legacy of Dr. James Rush, according to the terms expressed in his will.

Adopted—yeas 298, nays 293.

Second. Resolved, That so much of the present collection of books and other property of the Company as may by the directors be deemed expedient shall be retained in the present or some other central position, for general use and circulation.

Rejected—yeas 256, nays 301.

Third. Resolved, That a committee, to consist of three stockholders and three directors, shall be appointed for the purpose of consulting and advising with the executor of Dr. Rush in carrying out the provisions of the will; in procuring such legislation as may be needed, and also for carrying into effect the second resolution, by taking measures for securing the erection of a fireproof building for the reception of those parts of the library so to be retained, at such time and in such place as said committee may determine.

Rejected—yeas 213, nays 362.

Fourth. Resolved, That a copy of the foregoing resolutions be transmitted to Henry J. Williams, Esq., the executor of Dr. James Rush, as the acceptance of this Company of the bequest made by his will, and that the letter transmitting the same shall acknowledge the high appreciation by the Company of the confidence reposed in them by Dr. Rush, and of their cordial willingness to unite in carrying out in the most beneficial way his philanthropic intentions.

Rejected—yeas 268, nays 293.

The above resolutions are those reported by the joint committee of stockholders and directors. The fifth resolution was offered by the Hon. Henry M. Phillips:

Resolved, That the acceptance of the stockholders of the Library Company of Philadelphia is upon the express provision that so much of the present collection of books and other property of the Company as may by the directors be deemed expedient shall be retained in the present or some central position, for general use and circulation.

Rejected—yeas 259, nays 316.

From these figures it will be seen that upon the mere question of acceptance the vote considerably exceeded that upon any other resolution, and it was but by a small majority that this was carried. All measures looking toward the retention of a portion of the Library in an accessible location were defeated. So the great benefit which has been derived from the shelves by members of the Bar and persons in active business pursuits seems likely to be withdrawn.

EVENING BULLETIN.

Wednesday, October 20, 1869.

THE RUSH BEQUEST.

The meeting of the stockholders of the Philadelphia Library Company, held yesterday, to vote on the resolutions concerning Dr. Rush's bequest, is regarded by many as not settling the question finally. Here is a communication on the subject from a shareholder who has given much attention to the subject:

Messrs. Editors:—The vote of the stockholders of the Philadelphia Library yesterday has made their acceptance of this bequest more doubtful than ever. As the results may not be understood without a reference to the resolutions, allow me to give them, as follows:

1st. The acceptance was carried by a majority of 5 votes, out of 591 polled; 378 shareholders not voting at all.

2d. A division of the Library Building was rejected by 45 majority.

3d. The appointment of a committee to procure the legislation made necessary by Dr. Rush's will was defeated by 149 majority.

4th. To return thanks to Dr. Rush and his executor was defeated by 25 majority; and

5th. To make the acceptance conditional upon a division of the buildings was rejected by 59 majority.

The first was carried by the votes of several who also voted for the fifth, which was intended as in opposition; but as the will makes legislation an absolute necessity, a condition precedent to the conveyance of the lot to the Library Company, the refusal to have such is virtually a rejection of the bequest, and this is further strengthened by the rejection of the merely formal vote of thanks for the bequest. Let the Executor *now* do his duty; erect such a building as the will directs, and *then*, if the Library Company will procure the legislation necessary for the alteration of their charter as directed by Dr. Rush's will, convey it to the company; but until then, let there be no more agitation and strife on this subject.

The safe course to be pursued at the meeting to-morrow will be such as will promote this result. A SHAREHOLDER.

The reasoning in this statement of the case as it stands seems to be sound. At all events, there was a large minority that voted against the resolution of acceptance—mainly on the ground that postponement was most advisable—and this minority will probably still insist that nothing further can be done until the building is erected and the required legislation is obtained.

LEDGER AND TRANSCRIPT.

Philadelphia, Friday, Oct. 22, 1869.

THE LEGACY OF DR. RUSH—ACTION OF THE PHILADELPHIA LIBRARY COMPANY.—An adjourned meeting of stockholders of the Philadelphia Library Company was held at noon yesterday, to receive the report of the committee appointed to take the stock vote on the subject of the Rush Legacy. In the absence of Judge Sharswood, Eli K. Price, Esq., was called to the chair. When it had been ascertained that a quorum of the members was present, Hon. Edward King, chairman of the committee, made a report of the stock vote, as previously published. The result was stated to be that the resolution accepting the legacy of Dr. Rush according to the terms of the will, had been adopted, and that all the others had been rejected.

Mr. Fraley said that the result of the stock vote had taken every one by surprise who had participated actively in the canvass, and upon consultation of many who had been active, it had been concluded as the wisest and best course to pursue, to avoid at the present time exciting discussion on the question of the legacy, and he had prepared a resolution, which had met general approval, and which he would submit. It was in these words:

Resolved, That the further consideration of the bequest of Dr. James Rush be postponed, and that a committee consisting of five members and the Directors be appointed, who shall take the subject into consideration, and shall recommend to the members at a meeting to be called by the Directors such action as they may deem expedient or necessary.

Colonel J. Ross Snowden said that he was sorry he could not agree with Mr. Fraley in the views he had expressed, and he should oppose the resolution. He thought the question had been settled, and settled in a proper way. A stock vote had been taken, and that vote had shown a majority of the members who had thought proper to come forward to be in favor of the unconditional acceptance of the legacy. Was that vote to be totally disregarded? The speaker hoped not. With a view of obtaining an expression of opinion on the subject, he offered the following resolutions as a substitute to that offered by Mr. Fraley:

Whereas, A majority of the stockholders of the Library Company of Philadelphia has accepted, by a stock vote, on the 19th instant, the legacy of the late Dr. James Rush, according to the terms in his will; therefore

Resolved, That the resolution adopted by the said vote be entered on the minutes of the Library Company, as the acceptance by said Company of the munificent and philanthropic bequest of Dr. Rush.

Resolved, That a committee to consist of three Stockholders and three Directors be appointed to coöperate with the executor of Dr. Rush in carrying into effect the provisions of the said will.

Resolved, That the early construction of a fire-proof building to contain the valuable books, papers and other treasures of the Library Company, as well as those which will hereafter be obtained, is an object of the highest importance, and demands the immediate attention of the Company and of the executor of the ill of Dr. Rush.

Resolved, That a copy of the resolution adopted by a vote of the stockholders, together with these proceedings, be sent to H. J. Williams, Esq., the executor of Dr. Rush.

Colonel Snowden supported the resolutions by further remarks, in which he spoke strongly of the necessity of having a fireproof building for the Philadelphia Library. The history of our country, he said, illustrates the necessity for such a structure. For the want of one the early archives of New Hampshire, Massachusetts, New York, New Jersey, North Carolina and Virginia have been entirely or partially destroyed by fire. Valuable papers and documents of the United States Government have on several occasions been lost from the same cause. The resolutions he offered were intended to carry out the unconditional acceptance of the trust, which did not preclude such arrangements as might be deemed necessary to enable stockholders to obtain books as heretofore.

Theodore Cuyler, Esq., said he thought Philadelphia the only city in the world in which a discussion such as had been heard would have taken place, on the subject of accepting so magnificent a bequest as that of Dr. Rush. In other cities the bequest would not only have been promptly accepted, but a monument would have been erected to the memory of the beneficiary as a public benefactor. [Applause.] He had been unable to perceive force in any of the reasons which had been given for a postponement of the question.

In all fairness, the Library Company was bound to accept, if it designed to do it at all, within a reasonable time. It surely is not a reasonable time, he thought, after the executor of Dr. Rush had put up a building, as some gentlemen seemed to suppose. Such a building as he would erect might not be suitable for the Philadelphia Library, or it might be different from one the Library Company would desire to have erected. He urged the unconditional acceptance of the legacy promptly.

After remarks by General Stokes, Mr. Wm. Biddle, and others, the vote was taken on Col. Snowden's substitute, and it was declared lost. A division was called for, but the call came too late, it was said. Mr. Fraley's resolution was then adopted, and the meeting adjourned.

EVENING BULLETIN.

Wednesday, May 25, 1870.

THE PHILADELPHIA LIBRARY AND THE RUSH BEQUEST.—An adjourned meeting of the members of the Library Company of Philadelphia was held this afternoon, to receive the report of the joint committee appointed at a meeting October 21, 1869, and to take action thereon, and also to consider the question of the acceptance of an act of Assembly, approved Feb. 23, 1870, entitled "An act relative to the Ridgway Branch of the Philadelphia Library, to authorize amendments to the charter of the Company."

Hon. Eli K. Price was in the chair, and Mr. Wm. E. Whitman acted as Secretary.

Mr. Fred. Frailey, Chairman of the Special Committee, stated that several meetings had been held, and had resulted in the preparation of an act of Assembly, which had been passed by the Legislature. The Committee recommended that this act be accepted, and the proposed amendments to the charter be adopted.

H. M. Phillips, Esq., said that he had been requested to present resolutions to carry out the views of the committee. The act of Assembly had been prepared by the committee, and they were unanimous on the subject. He then offered a resolution accepting the act of Assembly, which was adopted. This act is as follows:

AN ACT *Relative to the Ridgway Branch of the Philadelphia Library.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same*, That the Library Company of Philadelphia be, and they are hereby authorized to act as trustees for the Ridgway branch of the Philadelphia Library and the trusts pertaining thereto, under the last will and codicils of James Rush, late of the City of Philadelphia, Doctor of Medicine, upon the condition and provisions therein contained, without limitation as to the yearly value or income of the said estate, but in such manner that the real and personal property of the company, including such books, pictures, statues and other works of literature and art as now are or shall hereafter be held by them in their own right, or on any other of [or] different trusts, shall be in no wise affected thereby, but shall remain and be under their own entire and exclusive control and disposition; and the said company are hereby empowered, after acceptance of this act by the members of the said company, to apply from time to time to the Court of Common Pleas for the city and county of Philadelphia, for such further amendments to the charter of the company as may be necessary to carry into effect the conditions and provisions of the said will and codicils in accordance with the directions of this act.

B. B. STRANG,
Speaker of the House of Representatives.
CHAS. H. STINSON,
Speaker of the Senate.

Approved the twenty-third day of February, Anno Domini one thousand eight hundred and seventy.

JNO. W. GEARY.

Mr. Phillips then submitted a resolution instructing the Directors to apply to the Court of Common Pleas for the following amendments to the charter of the Library Company of Philadelphia:

1. The Library Company of Philadelphia shall hereafter be held and taken to possess all such powers and capacities as may be necessary to enable them to act as trustees under the will of the late Dr. James Rush, according to the provisions of an act of the General Assembly of the Commonwealth, approved on the twenty-third day of February, one thousand eight hundred and seventy (1870), entitled "An Act relative to the Ridgway Branch of the Philadelphia Library."

2. So long as the Library Company shall act as such trustees, they shall do so under the following limitations and conditions.

First—Not more than one fourth of the Directors of the Library shall belong to any one of the three learned professions of law, theology or medicine; but this shall not operate so as to exclude from re election any of those who are members of the board at the time of the death of the said Dr. James Rush.

Second—The number of shares in the Library shall be limited to those actually issued at the time of the death of Dr. Rush; but the managers, by their by-laws, shall have the authority to allow any respectable persons depositing an amount and paying an annual sum, to be fixed by the Board of Managers, to have the full and free use of the Library as completely as if they were shareholders.

Third—The Library shall not connect themselves with any other body, corporate or politic.

The resolution was adopted.

Mr. Phillips then presented the following:

Resolved, That in assuming the administration of this munificent endowment the Library Company of Philadelphia desire both to record their high appreciation of the confidence reposed in them by Dr. Rush and to express, on behalf of the community at large, a proper acknowledgment of the great benefit which the testator designed for the advancement of literature and science in this city.

Resolved, That the chairman be requested to communicate to Henry J. Williams, Esq., these resolutions, and to convey to him at the same time the thanks of the Library Company of Philadelphia, for his long and useful services as a Director and the warm interest he has always taken in their welfare.

The resolutions were unanimously adopted.

The meeting then adjourned.

Feby 23rd AD 1870.

AN ACT

RELATIVE TO THE RIDGEWAY BRANCH OF THE PHILADELPHIA LIBRARY.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same*, That the Library Company of Philadelphia be, and they are hereby authorized to act as trustees for the Ridgway branch of the Philadelphia Library and the trusts pertaining thereto, under the last will and codicils of James Rush, late of the City of Philadelphia, Doctor of Medicine, upon the conditions and provisions therein contained, without limitation as to the yearly value or income of the said trust estate, but in such manner that the real and personal property of the company, including such books, pictures, statues and other works of literature and art as now are or shall hereafter be held by them in their own right, or on any other of [or] different trusts, shall be in no wise affected thereby, but shall remain and be under their own entire and exclusive control and disposition; and the said company are hereby empowered, after acceptance of this act by the members of the said company, to apply from time to time to the Court of Common Pleas for the city and county of Philadelphia, for such further amendments to the charter of the company as may be necessary to carry into effect the conditions and provisions of the said will and codicils in accordance with the directions of this act.

B. B. STRONG,
Speaker of the House of Representatives.

CHAS. H. STINSON,
Speaker of the Senate.

Approved the twenty-third day of February, Anno Domini one thousand eight hundred and seventy.

JNO. W. GEARY.

PROPOSED AMENDMENTS TO THE CHARTER OF THE LIBRARY COMPANY OF PHILADELPHIA.

I. The Library Company of Philadelphia shall hereafter be held and taken to possess all such powers and capacities as may be necessary to enable them to act as trustees under the will of the late Dr. James Rush, according to the provisions of an Act of the General Assemby of the Commonwealth, approved on the twenty-third day of February, one thousand eight hundred and seventy (1870), entitled "An Act relative to the Ridgway Branch of the Philadelphia Library."

II. So long as the Library Company shall act as such trustees, they shall do so under the following limitations and conditions:

First. Not more than one-fourth of the Directors of the Library shall belong to any one of the three learned professions of law, theology or medicine; but this shall not operate so as to exclude from re-election any of those who were members of the board at the time of the death of the said Dr. James Rush.

Second. The number of shares in the Library shall be limited to those actually issued at the time of the death of Dr. Rush; but the managers by their by-laws, shall have the authority to allow any respectable persons depositing an amount and paying an annual sum, to be fixed by the Board of Managers, to have the full and free use of the Library as completely as if they were shareholders.

Third. The Library shall not connect themselves with any other body, corporate or politic.

No. 1. *July Term, 1871.*

IN THE SUPREME COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

THE LIBRARY COMPANY OF PHILADELPHIA

vs.

HENRY J. WILLIAMS, ESQUIRE.

BILL.

FILED APRIL 11th, 1871.

To the within-named Defendant, Henry J. Williams:

You are hereby notified and required, within fourteen days after service hereof on you, exclusive of the day of such service, to cause an appearance to be entered for you in the Supreme Court for the Eastern District of Pennsylvania, to the within Bill of Complaint of the within-named complainant, and to observe what the said Court shall direct.

Witness our hands at Philadelphia, this 11th day of April, one thousand eight hundred and seventy-one.

WM. HENRY RAWLE,
R. C. McMURTRIE,
WM. M. MEREDITH.

NOTE.—If you fail to comply with the above directions, by entering an appearance in the Prothonotary's office within fourteen days, you will be liable to have the bill taken *pro confesso*, and a decree made against you in your absence.

No. 1. *July Term, 1871.*

IN THE

SUPREME COURT

FOR THE

EASTERN DISTRICT

OF

PENNSYLVANIA.

IN EQUITY.

THE LIBRARY COMPANY OF PHILADELPHIA

vs.

HENRY J. WILLIAMS.

ANSWER.

JOHN G. JOHNSON,
GEORGE JUNKIN,
GEO. W. WOODWARD,
Solicitors for Defendants.

Collins, Printer, 705 Jayne Street.

PHILADELPHIA INQUIRER

DECEMBER 4, 1872.

Nisi Prius---Judge Mercur.

The case put upon argument was that of the Philadelphia Library Company vs. H. W. Williams, executor of Dr. Rush, deceased. Quite an important point of practice was discussed before the merits of the case were touched, a mention of which may be of value to the bar. The case originally came before the court upon bill, answer and proofs, and, upon motion of plaintiff's counsel, was referred to a master to report the facts, the law of the case and a decree. The master did report upon these three heads and the decree reported by him was adverse to defendant, who accordingly filed exceptions to his report, upon which exceptions it now comes before the court for the first time to be argued.

Messrs. Rawle and McMurtrie, for the plaintiffs, and in whose favor the master had reported, claimed that, as the case had never been before any constitutional tribunal or sworn judge of the Commonwealth, this was really and substantially but a primary hearing, and they were entitled to the opening and conclusion of the argument. On the other hand, Messrs. J. G. Johnson, Junkin, and Judge Woodward, for the defendants, and who had filed exceptions, contended that they were bound to maintain their exceptions. They were the attacking parties, and were required to rebut and overthrow the conclusions of the master, and were therefore entitled to begin and conclude, and that such had been the practice ever since the present rules of court were adopted.

Judge Mercur sustained this latter view and accorded to the exceptants the opening and conclusion.

The point of contention was briefly this:—Dr. Rush, in his will, made Mr. Williams his executor of his entire estate, and requested him to purchase, as a site for the library building he intended to bequeath to the plaintiffs, a lot of ground 100 feet square and to be situate between Vine and Spruce and Broad and Fifteenth streets. Subsequently, in a codicil to his will, he removed all restriction as to the area and location of the lot, and gave his executor unlimited discretion to select whatever ground he deemed best. Shortly before his death he heard of a lot for sale at Broad and Christian streets, and was so much pleased with it that he caused his executor to purchase it at once as the site for the library building. Fearing that some unforeseen contingency might induce a disregard of his wish in this respect he called his executor to his death bed and there exacted from him a solemn promise that the building should be erected upon this lot and no other.

The plaintiffs were dissatisfied with this location, because they deemed it inconvenient, and for other reasons, and, therefore, sought to have the purchase set aside, maintaining that it was not part of the will, because it was not in writing, and that it was not a part of the executor's discretion, because done in pursuance to a promise, which was like a contract. The master's conclusions were in favor of this view and to them exceptions were filed. The case is yet under argument.

LEDGER AND TRANSCRIPT.

Philadelphia, Wednesday, Dec. 4, 1872.

NISI PRIUS.—*Justice Mercur.*

The matter of the exceptions to the master's report in the case of the *Philadelphia Library Co.* vs. *Henry J. Williams* came up. It arose under the devise of Dr. James Rush to the Philadelphia Library Co. Dr. Rush, in his will, bequeathed and devised, under certain conditions, all his estate, valued at about $800,000, to Henry J. Williams, in trust for the Philadelphia Library Co., to erect a library building on a lot of ground, 100 feet square, between Broad and Fifteenth and Race and Spruce sts. The restriction as to the size of the lot and its location was afterwards annulled by Dr. Rush in a codicil to his will, leaving full discretion as to both with Mr. Williams. But before he died Dr. Rush selected and paid part of the purchase money for a lot at Broad and Christian streets, and Mr. Williams, before his death, promised him that he would erect the library building on that lot. After the death of Dr. Rush the Library Co. accepted the devise, but finding that the library building was to be erected by Mr. Williams at Broad and Christian streets, the company filed a bill in equity to restrain the selection of that lot. The matter was referred to a master, who reported in favor of the company, and that report was excepted to. On the part of Mr. Williams, it was maintained that he had full discretion as to the selection of a lot, and, in having decided upon the lot at Broad and Christian streets, he was but carrying out the wishes of the deceased, who had hit upon that lot himself before his death.

On the part of the Library Company, it was argued that Mr. Williams in insisting upon this lot was not using the discretion invested in him by the will, but in view of a promise made to deceased before his death by which promise he had surrendered his discretion as much as though he had selected from a consideration of personal advantage; that as the whole amount of the devise was to be placed on a building on which a large amount of taxes would have to be paid, the Library Company might become bankrupt, as the removal to such an inaccessible point as Broad and Christian would endanger its receipts by preventing patronage. The argument was not concluded.

The Philadelphia Inquirer

MONDAY, MAY 19, 1873.

PENNSYLVANIA.

End of the Celebrated Rush Will Case.

HARRISBURG, May 17.—[*Special Despatch to The Inquirer.*]—The Supreme Court in banc to-day delivered its opinion in the celebrated will case of the late Dr. James Rush, reversing the opinion of Judge Mercur at nisi prius, and thus allowing Henry J. Williams, Esq., the executor of the will of Dr. Rush, to fix the location of the Philadelphia Library at his option.

May 17th 1873

Judge Mercur's decision was reversed and the bill dismissed,

Saturday.

3. P.M. May 17th/73.

Dear Sir

Mr Johnson has informed me that in the Philad^{a} Siby Co^{y} case the Decision has been reversed and the Bill dismissed.

Respy Yours.

James S. Harmer

Col: Alex^{r} Biddle

No 712. Walnut St

FOR SALE—THE LARGE MANsion house of the late Dr. Jas. Rush, situated on the south side of Chestnut street, between Nineteenth and Twentieth streets. Lot 102.8 by 235, with extensive stabling, coach house, hot houses, &c., all in good order. Apply to THOMAS CRAVEN, 504 Minor street.
au4 m w f 1mo§

Monday, August 4, 1873.

Yours
Col. Clay Biddle
No. 712 Walnut St.
Philad.a

that he caused his executor to purchase it at once as the site for the library building Fearing that some unforeseen contingency might induce a disregard of his wish in this respect he called his executor to his death bed and there exacted from him a solemn promise that the building should be erected upon this lot and no other.

The plaintiffs were dissatisfied with this location, because they deemed it inconvenient, and for other reasons, and, therefore, sought to have the purchase set aside, maintaining that it was not part of the will, because it was not in writing, and that it was not a part of the executor's discretion, because done in pursuance to a promise, which was like a contract. The master's conclusions were in favor of this view and to them exceptions were filed. The case is yet under argument.

Inquirer.]—The Supreme Court in banc to-day delivered its opinion in the celebrated will case of the late Dr. James Rush, reversing the opinion of Judge Mercur at nisi prius, and thus allowing Henry J. Williams, Esq., the executor of the will of Dr. Rush, to fix the location of the Philadelphia Library at his option.

May 17th A.D. 187[illegible]
Judge Mercur's decision was reversed and [illegible] dismissed,
J. C. [illegible]

PUBLIC LEDGER
AND DAILY TRANSCRIPT.
Philadelphia, Friday July 23, 1875.

AUCTION SALES.

THOMAS S. ELLIS, & N. A. JENNINGS.
M. THOMAS & SONS, AUCTIONEERS,
139 and 141 South FOURTH Street.

Peremptory Sale.
8000 SQUARE FEET ENCAUSTIC TILES, ON GIRARD AVENUE BRIDGE.
ON TUESDAY,

July 27th, at 12 o'clock noon, at the Philadelphia Exchange, will be sold, all the Maw & Co.'s Encaustic Fancy Tiles, as contained on the borders of the sidewalk on Girard Avenue Bridge, Philadelphia, containing about 8000 square feet. To be removed immediately after the sale. Terms cash. 17-6t§

EXECUTOR'S SALE, ESTATE OF DR. JAMES RUSH,
ON TUESDAY,

July 27th, at 12 o'clock, noon, at the Philadelphia Exchange, the large and valuable four-story brick Mansion, with Stable and Coach House, No. 1914 Chesnut street, 102 feet 8 inches front, 235 feet deep to Sansom street; two fronts, well and substantially built; the situation is very desirable for a hotel or stores.

Immediate possession. Full particulars in handbills. 22-5t§

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D50 Illuminant, 2 degree observer
Density
0.04 0.09 0.15 0.22 0.36 0.51
0.75 0.98 1.24 1.67 2.04 2.42
Golden Thread
Colors by Munsell Color Services Lab
Don Williams

Decr 31: A.D. 1872.

IV. *Opinion of the Court Below.*

MERCUR, J. (Ulysses Mercur)

This case comes before me upon exceptions to the report of a Master. He was directed to report the law, the facts, and a decree proper to be made therein. Twenty-two exceptions have been filed to his report. The very able arguments of counsel, however, have not been directed to each exception separately, but rather to the discussion of two questions, which may be stated to be covered by these, to wit:—

First. What powers were vested in the defendant under the trust created by the will of Dr. James Rush in regard to the location and purpose of the library building?

Secondly. Has he properly executed those powers in selecting the lot at Broad and Christian Streets as the site for said library building?

The first question can be more satisfactorily answered by referring at some length to different portions of the will.

The testator, by his will of the 26th of February, 1860, devised and bequeathed the whole of his real and personal estate to his brother-in-law, Henry J. Williams, his heirs and assigns, in trust, to pay certain legacies, annuities, gifts, and bequests, to be thereafter expressed in codicils, and then to hold the residue and remainder of his estate "in trust, to select and purchase a lot of ground, not less than one hundred and fifty feet square, situate between Fourth and Fifteenth and Spruce and Race Streets, in the city of Philadelphia, and thereon to erect a fire-proof building, sufficiently large to accommodate and contain all the books of the Library Company of Philadelphia." And upon the further trust, "so soon as this building is completed and ready for occupation, then in trust to convey the same, with the lot of ground whereon it is erected, unto 'The Library Company of Philadelphia' aforesaid,

and their successors, for the uses and purposes of their library, and for no other use or purpose whatever." Providing, however, before such conveyance should be made to the said Library Company, they should, either by an alteration in their charter or in some other way satisfactory to his executor, bind themselves and their successors to conform to, and comply with, certain express conditions therein specified. One of the conditions was "that all the accounts of the receipts and expenditures from the estates aforesaid, real and personal, shall be kept separate and distinct from all other accounts of the said Library Company, and shall all be headed and kept as the accounts of 'The Ridgway Branch of the Library Company of Philadelphia.'"

He also appointed said Williams executor of said will.

By a "first codicil" thereto, dated the 16th of May, 1866, he imposed additional restrictions upon said Library Company, and designated the beneficiaries of the legacies, annuities, and gifts indicated in his original will.

In his "additional codicil" of the 18th of April, 1867, he says, "I authorize and allow my executor, under a broad and thoughtful foresight, to increase the size of the lot and select any situation he may deem most expedient, without regard to any provision of my will or codicils."

On the 18th of January, 1869, Dr. Rush purchased by contract a lot at Broad and Christian Streets in the city of Philadelphia, for the avowed purpose of having the Library building erected thereon, and made a payment of $1000 upon the contract. He held this lot subject to the payment of the residue of the purchase money at the time of his death. That occurred on the 26th of May, 1869. The defendant has selected this lot as the site for the library building. Had he the power in equity so to do? He says, he had: that the will left it to his sole judgment and discretion, and not to the judgment and discretion of anybody else; and in the exercise of that judgment and discretion he has made the selection. Superadded to the power given

him in the will he points to the purchase of this identical lot by the testator, after the execution of his will, with the express object of having the library building located thereon, and claims that was an ademption *pro tanto*.

I, however, am of the opinion that the doctrine of ademption or double portion cannot be applied to the facts in this case. The defendant must fall back upon the will, and rely upon that alone, for his authority. By that instrument he was authorized to select any lot which commended itself to his own free, unbiased judgment as most suitable. If no improper influences were operating upon his mind and warping his judgment in the exercise of his discretion, and he acted in good faith, a court of equity will not interfere with that discretion; Hill on Trustees, 489; Gochenauer vs. Froelich, 8 Watts, 18; Chew vs. Chew, 4 Casey, 17; Pulpress et al. vs. Af. M. E. Church, 12 Wright, 204. But discretionary powers like other authorities must be exercised in the manner prescribed by the trust instrument. Hill on Trustees, 488.

To the defendant was given by this instrument the power to select any lot which "under a broad and thoughtful foresight" commended itself to his judgment. The selection must be made under and by the exercise of the defendant's judgment entirely free from any obligation imposed upon it by the testator other than those contained in the will and codicils. Such a discretion the defendant must bring to the discharge of his trust, and then it only marks the limits of the power given to him. The exercise of such a discretion the claimants have a right to demand. They can require no more, and may not submit to any less.

Secondly. Did the defendant properly use his own discretion, and execute the power intrusted to him in the selection of the lot in question? The complainants aver that this site will be prejudicial to the interests of the library, utterly destructive of the trusts which they have hitherto administered, and which they claim it was the manifest design of the testator to promote. They further allege that

the defendant assumed the trust under such a trammelled and crippled discretion that he was thereby disabled from using his natural unbiassed judgment in the selection of the lot. The Master concurred in this, and in his very able report has found "that the trustee, by his promise to the testator, had so crippled his discretion as to make it impossible to say how much his preference for the lot in question is due to his unbiassed opinion that it is most expedient for the purpose, and how much to his promise to Dr. Rush," and that the action of the defendant should be subjected to the control of the court.

This presents the controlling question in the case. Do the facts and the law justify the Master in his conclusions?

The evidence shows that some weeks before the death of the testator he became very anxious to have the location of the intended library building fixed and settled; and he desired the defendant to ascertain the size and cost of all the vacant lots on Broad Street (upon which street he desired it to be placed). The defendant procured statements of the sizes and prices of all he thought suitable, from Vine to South Street; but Dr. Rush was not satisfied with any of them. Some other gentlemen brought him a plan of the lot on Christian Street, and he was so much pleased with it that he directed the defendant to buy it at once. The defendant did so, by the aforesaid contract of May 18th, 1869. The Doctor thereupon expressed great pleasure that it was concluded, as it relieved his mind from all anxiety. "Some days after," says the defendant (in his letter of the 30th December, 1870, to Dr. Charles Willing, chairman of a committee appointed by the complainants), "the Doctor recurred again to this subject, as it had probably occurred to him that he had given me an absolute discretion as to the situation of the library by the terms of his will, and that I might be induced to overrule his decision after he was gone. He called me to his bedside and asked me to give him a promise that I would build the library on that lot, and nowhere else. I gave him this promise as fully and

solemnly as language could express it, and he then thanked me, and said he could now die in peace."

In his testimony taken before the Examiner on the 17th of April, 1872, he says: "I think it was about the second day after the interview with Mr. Wharton (which he had just stated was on the 20th or 21st of May, 1869), when I was seated by Dr. Rush's bedside. I think the lot had been the subject of conversation between us, when the Doctor turned to me and said, 'Harry, now you will promise me to put the building upon that lot?' I said, 'Certainly, Doctor, if you desire it; I will promise you that I will put it there, and nowhere else.' The Doctor merely expressed his satisfaction. I think he said, as near as I can recollect, 'Well, I am very glad of it; it is now all settled.' "

The Doctor died within five or six days thereafter. This promise, then, was demanded and given a very few days prior to his death. It was two years after the last codicil to his will had been executed. It was demanded of a brother-in-law to whom he was about to intrust more than a million of dollars—I say about to intrust, for there was yet time for him to revoke the will and all of its trusts. He was unwilling to pass all his vast estate into the hands of the defendant upon the implied assurance that the library building would be located upon the lot which he had purchased for its site. Hence he made the specific demand. What his action would have been, had the defendant's answer not been in accord with his judgment, is left to conjecture. He suffered his will to remain unchanged. He passed from this earth, there is every reason to believe, in an abiding faith that he had restrained the free choice of the defendant, and that he had secured the erection of the library building upon the lot designated by himself.

What was the position of the defendant? He knew that he had been named in the testator's will as his trustee and executor. Sitting by the bedside of his dying friend and brother—recognizing the Doctor's right to control his own

property—wishing to relieve his mind from all doubt upon the subject that troubled him, the defendant then and there promised, as fully and as solemnly as language could express it, to put the building on that lot and nowhere else. Do not all the attendant and surrounding circumstances impress the mind of every conscientious and reflecting person with the very strong moral obligation thereby imposed upon the defendant? I can scarcely conceive one stronger. The greater the integrity, the higher the moral sense, the stronger would be the obligation upon the conscience. That the defendant possesses both in a high degree is manifest in his letter of the 30th December before referred to. When asked, in behalf of the claimants, to reconsider his intention of building on said lot, and locate the building elsewhere, his answer was such as did credit alike to his conscience and to his heart. After repeating the promise which he had made, and the circumstances under which it was made, he says:—"Now, do you think it would be at all consistent with truth and honesty for me voluntarily to violate a pledge given under circumstances which render it as sacred as an oath, and made to a dying man who had confided to me the whole of his estate? Would you, with your well-known delicacy and sensibility to all honorable engagements, feel yourself justified in doing so were the case your own, and should I not lose your respect and regard (which I value very highly) were I to hesitate for a moment as to what was my duty?"

Therein and thereby he proves the indelible stamp made upon his mind. Conscience, resting under an obligation strong as an oath, bound him to the observance of his promise. With that deep recognition of moral obligation resting upon his conscience, he assumed the duties of the trust. He thinks he executed the power and discharged the trust under the written will alone, wholly uninfluenced by his promise.

The well-known integrity and the high moral character

of the defendant do not permit me to doubt that he honestly thinks so. If, however, he be correct, there must have been a time when his conscience was absolved from this deep moral obligation—a time when he threw it off, and when the lawful one took exclusive possession of his judgment. I understand the answer to be that it was at the time he was obligated to take the usual oath in order to assume the duties of executor. This was on the 31st of May, 1869. This latter oath, he says, created a legal as well as a moral obligation. Did it, however, wholly eradicate the moral obligation, "sacred as an oath," under which he had rested up to that time? In his letter of 30th December, 1870, he refers to it as still resting strongly upon him, and that his duty required him to be influenced thereby.

It is contended, however, inasmuch as the defendant has sworn in his answer, and again before the examiner, that he has considered and decided the question as to the site of the library building entirely irrespective of and uninfluenced by any promise made by him to Dr. Rush, that the complainants have failed to make a case in which a court of equity will interfere with the discretion which he has exercised.

In considering the act which the defendant has committed, or is about to commit, we must look at the position of the donor, the donee, and of the beneficiaries of the power. The beneficiaries have the right to require the power to be executed according to the terms of the written instrument creating it. If the donor induced the donee to accept the trust under a pledge that he would execute it otherwise than was provided in the instrument, he committed, in equity, a fraud upon the power. If the donee accepted it under such pledge and so executed it, he committed a fraud upon the power. It is not necessarily a moral fraud. A wilful departure from the terms of the power is a fraud upon it, without regard to whether the motive thereto was good or bad. Topham *v.* the Duke of Portland, 1 De Gex. Jones

& Smith, 571. Nor does it change the rule of law in regard to the agreement to pervert the trust from the original purpose for which the power was intended, whether that influence be exerted before the appointment or after it, provided that in both cases it secures the consent of the appointee to fulfil the wishes of the appointer. Topham *v.* Portland, 31 Beavan's Reports, 539, 540.

No American authority has been found which covers the case under consideration, but in Topham *v.* The Duke of Portland, reported in 5 Chan. Appeal Cases, 40, it is held that although the donor and the donee both swore that the power was not executed to carry out any agreement between them, other than those specified in the written instrument, yet that a chancellor might look beyond the oaths and see whether the presence of a moral obligation did not at the date of the appointment, and when the trustee came to act, weigh upon her mind with such force as to make her a passive instrument of the donor's intentions.

A judge or juror is forbidden to sit in a case wherein a party litigant is closely related to him by blood or marriage. He will not be permitted to purge himself of his disqualification by answering that he can, and will act wholly uninfluenced by such relationship.

Certain facts, which the wisdom of ages has recognized as influencing the judgment of mankind generally, create a conclusion of law that they will influence the judgment of each individual.

Applying the law and reasons to this case, testing the uncontradicted evidence by all those principles which I have ever been taught to believe influence the human mind, and control the actions of men, it does establish such a state of facts as would naturally and reasonably restrain and trammel the free judgment of the donee of a power. Such a general presumption cannot be removed by the honest opinion of a donee that in his particular case he is not influenced thereby. Hence I am unable to conclude

that the defendant had, when he made the selection of the lot in question, or has now, such a free discretion and unbiassed judgment as the complainants are entitled to invoke and a court of equity bound to provide. It should therefore be referred to a master to inquire and report what will be the most expedient location for said library building, without my indicating any opinion as to whether or not the lot at Broad and Christian Streets is a suitable one.

The exceptions to the report are dismissed, the report of the master is confirmed, and decree accordingly.

Decree.

And now, this 31st day of December, A. D. 1872, this cause came on to be heard upon bill, answer, replication, and proofs, and was argued by counsel; Whereupon, in consideration thereof, the Court are of opinion and so declare, First, that the complainants are competent to, and of right may, when the proper time shall arrive, assume the trust confided to them by the will of the testator, Dr. James Rush; Secondly, that all the powers to that end conferred on the defendent by the will of the said testator are trusts, in which the complainants have an interest in the nature of property, and which are to be administered by the defendant only in the manner in which all trusts can, or of right ought to be administered; And it appearing to the court, as well by the written admissions of the defendant as by his answer and testimony in this cause, that at and before the time when the said trust vested in him, he had absolutely bound the discretion intended to be given to him by the said will as to the selection of a site for the building proposed by the testator to be erected, and was and is thereby disqualified from, and incapable of exercising the power and trust in that behalf given to him by the said will, and that, in order to carry out the true intent and meaning thereof, the said trust may, and should be now exercised under the supervision of this Court according to

the course and practice of chancery;—it is, therefore, ordered and decreed that it be referred to

Esq., as master, to inquire and report what would be the most expedient situation for the said building, to the end that the true intent and purpose of the testator, as contained in his will, may be carried into full effect; And that he have authority to take testimony in addition to that taken before the examiner; And that the defendant be restrained, until further order, from proceeding to erect the said building on the lot situate at the southeast corner of Broad and Christian Streets; And the Court reserves all questions of costs and expenses for its further consideration.

V. *Assignments of Error.*

1. The court erred in granting an injunction against the erection of a building on the lot described in the bill.
2. The court erred in granting the prayer of the bill.
3. The court erred in decreeing in favor of complainant.
4. The court erred in refusing to dismiss the bill.

VI. *Argument.*

It is conceded by the complainants that the executor, who has selected a site which will in the deliberate judgment of the donor of the power, best promote its objects, has honestly endeavored, since his appointment, to do his duty under the will, and that he believes he has done this. There is no allegation of any fraudulent or improper conduct, nor does any one breathe a suspicion as to the honesty of his motives. It is claimed, however, that a pro-

Jany 2d. A.D. 1873.

"

The Franklin Library.

"

A very strange legal question has arisen and just been decided in "Pennsylvania", in which rules of morals and of law, or rather its Policy, have come oddly in conflict — morality, as is sometimes the case, kicking the beam.

One of the wealthiest citizens of Philadelphia, Dr: James Rush, a man of eccentric intellect, died about three years ago. (May 26th A.D. 1869.), having devised the bulk of his estate, amounting to a million of dollars, in Trust for the benefit of the old "Franklin Library."

His eccentricity showed itself in many features of his will, as in the reason he gave for this endowment, "That the frugal oyster Suppers of the Managers"
" were paid for out of their own pockets"
and not out of the corporate funds", and

in his prohibition of newspapers "organs of disjointed thought," as he, studying the Philadelphia press, naturally, enough thought them.

The estate was devised in Trust to the Testator's brother in Law, Mr Henry A. Williams, an eminent member of the Philadelphia Bar. In the will the choice of a site, subject to certain territorial limitations, was left to the Trustee; but in a codicil these restrictions were abrogated, and he was authorized "under a broad and thoughtful forecast, to "select any situation he might select, "without regard to any provision of "the Will or codicils." After this the written testamentary provision was silent. But some weeks before Dr. Rush's death, his mind in full vigor, (for no incapacity is imputed), he pur-

chased and paid for-a lot in an out-
of-the way part of the City, and send-
ing for his Trustee and Executor, ex-
acted - or rather solicited, for there
was no undue agency - a promise that
the Library should there be built.
"He turned to me," Mr Williams
testifies, "and said "Harry, now will
you promise me to put the building
upon this lot? I said "certainly,
Doctor, if you desire it, I will put
it there and nowhere else." I gave
him the promise as full and solemn-
ly as language could express it, and
he then thanked me and said he
could now die in peace," In five
or six days afterwards he did die
and his Executor entered on his
trust.

The site thus selected did not at

all suit either the elderly gentlemen who we presume, direct the Franklin Library, or the mafs of the people who use it. It was in that dismal malarious region (suburban) where ruffians once did congregate, and where monthly oyster suppers might be perilous.

But the endowment they craved, as well they might, It was a fearful stroke in many an aged bosom.

Hercules between Pleasure and Duty, GARRICK torn apart by the rival muses, were faint types of the venerable Franklin Directory distracted by "Money" and "Moya-mensing." At last it was decided to site a bill and throw the whole matter into Chancery.

For nearly Three Years it has been

actively litigated, and now the interlocutory decision is that the verbal death-bed promise is not only utter by inoperative, but that the fact of its having been made actually takes away all discretion from the Trustee, and compels him to build the Library wherever the Court, or in plain English the devisee chooses. On such a decision in a moral point of view, we may well pause, and we note that there is already manifest and natural perplexity.

Technically, we infer, conceding exceptionally very vast powers in a Court of Equity the judgment may be right. If a Testator by Will leaves his property to A, and then exacts a parole promise

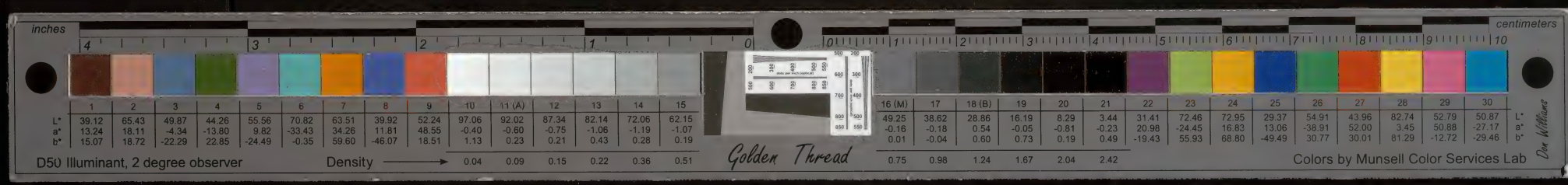
from his Executor - to give it to B, A, would unquestionably be entitled to it. But if a Testator gives to his Executor a discretion, "the exercise of a broad and thoughtful forecast," whether it shall be A or B or C, and then exacts the specific promise and the Executor exercises the discretion honestly, we are by no means clear that the Law should interpose to prevent it, and defeat the Testator's clear intention. This however we laymen must concede is a question of great refinement, and on which the traditionary and characteristic subtlety of the Philadelphia Bar has no doubt found appropriate exercise.

We simply record it as a matter of curious news, rejoicing, of course, that our neighbours are to have a Library, not in the neighbourhood of League Island and still better content that Mr Astor did not perplex his Executors and Trustees with any such crotchets, and that Mr Lenox in full life and vigor, is seeing to the consummation of his plan of beneficence.

New York World

Sunday Jany. 2d A.D. 1873.

W B, Reed.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WEDNESDAY, MAY 21, 1873.

BEQUEST OF DR. RUSH

DECISION OF JUDGE MERCUR REVERSED

By the Supreme Court in Banc

SITE FOR THE RIDGWAY BRANCH LIBRARY

To be Selected by the Executor

FULL OPINION OF JUDGE AGNEW

Bill of the Library Company Dismissed

INTERVIEWS WITH MESSRS. WILLIAMS AND SMITH

What They Think of the Situation

As previously stated the Supreme Court in banc, sitting at Harrisburg, on Saturday reversed the decision of Judge Mercur in the Rush will case. In a codicil to the will of the late Dr. Rush the executor, Henry J. Williams, Esq., was authorized to select any site on Broad street for the location of the Ridgway Branch of the Philadelphia Library, and that Dr. Rush had, previous to his death, exacted a promise from his executor to place this branch library at the corner of Broad and Christian streets. In December last Judge Mercur, at nisi prius in this city, decided that the executor could not be bound by this verbal promise, and that the site must be selected by a master in chancery. It is this ruling which is now reversed by the Supreme Court, and it may now be considered as settled that the site of the branch library will be at Broad and Christian streets. The bill of the Philadelphia Library Company is therefore dismissed at the cost of the plaintiffs. The decision of the court was delivered by Judge Agnew, from which Chief Justice Read and Judge Mercur dissented.

The following in full is the

Opinion of Judge Agnew.

The Library Company of Philadelphia vs. Henry J. Williams, Esq. Certificate from Nisi Prius. Appeal of Defendant. In equity.

Agnew, Judge.—This is not an ordinary proceeding. It is an endeavor to set aside a man's solemn act, done in the exercise of his right of property, in his lifetime, when he had absolute power over his own estate. It is an effort also to declare his friend, the chosen agent to execute his purpose, invested with absolute discretion to this end, disqualified to perform his will, because at his earnest request this friend has adopted and followed the testator's act. As a consequence, the bill seeks, on the ground of entire disqualification, to take the actual execution of the will into the hands of the court, and to declare how much of the corpus of the estate shall be used for the purpose. As a further consequence, the will must be executed by a stranger —a master acting under decrees procured from time to time by plaintiffs, for, by the total disqualification of the executor, the testator is no longer represented. This is the frame and purpose of this bill. Such a proceeding violates the right of private property and the spirit and purpose of the bill of rights, and cannot be justified except upon the clearest evidence of the incapacity of the executor, or that he is acting in fraud of his powers.

The case, briefly stated, is this:—Dr. James Rush, a gentleman of education and fortune, though somewhat peculiar, conceived the thought of founding a noble charity, at once a public benefit to his native city, Philadelphia, and a monument to those from whom he derived his wealth. He pondered the subject, and then made his will. At first he restricted the site of the building to certain central limits, but the rapid progress of the city during the eventful period from 1860 to 1867, altered his views of location. Fearful, if his charities were placed near the centre of the city, where property was rising rapidly, that the building might be swept away by the tide of speculation, he made a codicil, revoked the restriction, and enabled his executor to go beyond the limits stated in his will. Still reflecting upon his scheme for about two years more, and anxious to locate his charity to suit his own thoughts, he had careful examinations made by his friend and executor, and finding no other site suitable, either from price or size, he finally chose a spacious square on the great central avenue of the city, a few squares south of the original limit, and bought it at a cost of $130,000, or about one-eighth of his entire estate.

Upon this ground he directed his executor to build, and, to secure his co-operation, obtained a promise to do so. This promise was given, the executor swears most positively, not only out of regard to the testator's wishes, but because the lot and site were approved by his own judgment, founded on a previous examination of all the known eligible sites. Within a month after the death of Dr. Rush, Henry J. Williams, the executor, consulted eminent counsel as to the obligation of the contract of purchase upon the estate, and upon his own duties in making the selection, and was advised by Judge Strong that the purchase was binding, that his power of selection was absolute, and was to be exercised upon his own judgment.

Dr. Rush died on the 28th of May, 1869. Mr. Williams made the selection under the will, and communicated it to the library company on the 29th of June, 1869, having previously stated it to individual members. Mr. Williams, the executor, a member himself of the library company, having no selfish or hostile interest, an old and skilful lawyer, well informed of his duties, a gentleman of intelligence and refinement, one whose integrity and purity of character are conceded by the plaintiffs to the fullest extent, is admitted to have acted in perfect good faith, and he, on his oath, attests that he acted upon his own judgment.

It is alleged that the selection of the site at Broad and Christian streets, chosen and purchased by the testator and adopted by the executor, must be set aside, not because of any intent to disappoint the trust or of the slightest *mala fides*, but because the mind of the executor was, by reason of a promise to the testator, under a constraint, of which he was unconscious, when he made the selection, which made him incapable of exercising his judgment, notwithstanding he swears that he did act upon his own judgment, and because it accorded with his promise. The proposition, instead of being so plain and clearly established that a court of

equity can act upon it to set aside the testator's choice and oust his trustee, is simply incredible, and is destructive of the right of private property. It denies the power of self-knowledge and the capability of self-examination upon which the doctrine of accountability for the thoughts and purposes of the heart rests. It asserts a want of power to introspect our consciousness and motives of action under the responsibility of an oath, and our ability to distinguish between the obligation of a promise and the determination of the judgment in doing an act of importance pondered for weeks.

The case is brought directly to this point, for the positive, distinct, and reiterated assertions of Mr. Williams in his answer and his testimony, that he did act upon his own judgment, compel us to decide either that he does not know the operations of his own mind or that he is forsworn. The latter alternative is conceded on all hands to be untrue. Can it be possible that a court, in such a case and on such ground, will depose the executor, cast the property purchased by the testator back upon the estate, wrest the power from his hands, and place it in the hands of others? There is no such case to be found in the books here or elsewhere; and if any can be found abroad it cannot be imported into this free State. Before examining the law let me state the bearing of the facts.

Was the selection in the line of Dr. Rush's written will? The will is dated 1860. Dr. Rush devises to Mr. Williams all his estate, in trust, to select a lot not less than 150 feet square, between Fourth and Fifteenth and Spruce and Race streets; and to erect a fire-proof building sufficiently large, not only for the present wants of the library company, but for future extension according to his own plans and directions; and if he should have none, then according to Mr. Williams' best judgment and to the views he had expressed to him.

Thus, by the terms of the will, the testator reserved to himself the right to leave written instructions; and if he did not, that the executor should act upon his verbal directions. His verbal instructions to his executor are therefore within the very line of the written will. It is a matter of history that the war of the rebellion changed the whole surface of affairs in this city as well as elsewhere, by the inflation of the currency, the rise of prices and increase of business.

These had a strong influence upon Dr. Rush's mind. Let the language of the first codicil express his own thought. Paragraph 26—"Events and circumstances occurring within the last six years have obliged me to make several changes in my will." Then he proceeds to state the risk of making a new will, lest his death within thirty days afterward might void it. "To avoid the possibility of such a result (he proceeds) I must let it stand as it is, and add other provisions as they may occur to me."

This codicil is dated May 16, 1866. No better exposition of the testator's thoughts can be made than thus given to us in his own words, to exhibit the state of his mind when he made a second codicil of the 18th of April, 1867. Remembering this, the testator's change of views since 1860, when the original will was made, is clearly expressed in the language of the second codicil.

Section 2. "I have in my will *limited the* extent of the lot to be purchased for the library building, as *well as its localities;* but as I desire that it shall have not only strength, durability and accommodation, but a so be of *sufficient magnitude for any future or conti gent,* but not ambitious or competing increase of the library, in order to prevent, if possible, it being torn down in twenty years, *and the lot sold at a speculative profit to suit the hyperbole of the times,* I authorize and allow my executor under a broad and thoughtful foresight *to increase the size of the lot* and select *any* situation *he may deem* most expedient, *without regard to any* provisions of my will or codicils." I have italicized the language to bring out its meaning.

Now, what was the testator's own idea as contained in this very provision (the power in question) of a broad and thoughtful foresight?

He tells us himself to increase the size of the lot and to go out of the original limit, to select *anywhere.* In a broad and thoughtful foresight he foresaw that the centre of the city would not suit his purpose or his means. He said to his executor, go out and choose elsewhere, so that the magnitude of the building will suit all future time, and that the edifice itself shall not be swept away by the irresistible tide of speculation, to suit, as he termed it, the hyperbole of the times, a figure to express the superlative fancy and spirit of an inordinate inflation of prices.

In the next place, did the testator follow the line of his own thought, as expressed in the will itself? The proof of this is very clear, and is not contradicted. He made inquiries for eligible lots—new examinations made, both within the original limits and without. Mr. Williams himself explored, but found nothing suited to Dr. Rush's purpose. Finally the lot at Broad and Christian streets presented itself, and here the testator found a site suited to his thought—a large, open square, on the main great avenue of the city, 299½ feet on Broad street, and running back 527 feet on Christian, containing about three acres and a half, at a price of $130,000—a large sum, indeed, but still leaving enough, as he believed, to put up the extensive building which filled his thought, as expressed in the codicil itself. In view of the rapid extension of the city within the last thirteen years, what right have we to say this selection was not made under a broad and thoughtful foresight, and does not meet the views and purposes expressed in the written will and codicils. The views and wishes of the library committee are on the side of the true question, which must be decided upon the will itself.

Next, what were the grounds on which Mr. Williams exercised his discretion? These are best stated in his own words in his answer and sworn testimony.

"I have chosen this site for these among other reasons:—

"1. It is on the finest street of our city,

"2. It is, so far as I know, the only lot on that street sufficiently large for the building I must erect which I can obtain at a reasonable cost.

"3. If compelled to purchase a lot elsewhere, I will not be able to erect the building ordered by the testator.

"4. I know of no suitable lot on any other street which can be had at the same cost.

"5. It is but a little distance from the centre of the city, and is within easy reach, by car, of all portions of it.

"6. It will not be necessary to have the library building torn down in twenty years, and the lot sold because of its limited dimensions.

"7. Its size insures, for all time, light, air, retirement, quiet, and safety from external dangers.

"8. It already belongs to the estate.

"9. It is exactly suited to the kind of library Dr. Rush proposed to endow—not a reading room, nor one containing the light and ephemeral literature of the day, but one for readers and students of a higher grade.

"10. It will carry out the cardinal intent of the testator, as he understood it, because it is the one he selected himself.

"I adhere to this choice and to my determination to build thereon, notwithstanding the opposition which has been raised, because it was to my judgment and not that of others Dr. Rush confided the performance of his testamentary dispositions."

Certainly these are good reasons, and, aside from all other evidence, vindicate Mr. Williams' assertion that he acted on his own judgment, for they are processes of thought, or steps which lead to his conclusion. Now let us see what he says on oath as to the exercise of his own judgment, and first in his answer in direct response to the bill:—"I selected the Broad and Christian street lot when I had assumed the executorship, after calm, careful and deliberate consideration, having thought of it in every shape, favorable and unfavorable, in which it had been presented, because it was, in my judgment, the best I could obtain for the object and purposes of Dr. Rush's will, and because it combined adequate dimensions with cheapness and position."

In regard to his promise to Dr. Rush—the alleged ground of disqualification—after stating his efforts to find a suitable lot, he says:—"It was after this that the promise stated in my letter of the 30th December, 1870, was made to him. This was given with a knowledge of almost every circumstance which led subsequently to my decision when, as his executor, it became my duty to determine the site of the library." Again:—"I aver that at the time I made said promise I thought it the best lot for the purpose which could be obtained; and I aver that after careful reflection and subsequent examination I still entertain this opinion." There is much more in the answer to the same effect.

His testimony is given as strong as his answer. When asked whether his judgment was not influenced by his promise, he replied:—"Not that I am conscious of at all. I believe if I had made no promise, and had not known the wishes of Dr. Rush, my judgment would have been the same." Again he said:—"If my promise to Dr. Rush, and my oath as executor had been at all in conflict, I would have resigned my executorship at once, and left some other person to put up the building."

Much more he said to the point, but this will suffice to know the strong and positive convictions of his mind. In these assertions he is also strongly corroborated by the testimony of many witnesses as to what took place just before Dr. Rush's death, and the communication of the selection of the lot to Mr. Wharton, Mr. Biddle and others. He consulted counsel, as proved by Judge Strong's letter of the 15th of June, 1869, before the meeting of the library company, on the 29th of June, when his selection was formally made known. A committee of conference was appointed at this meeting. To Mr. Farley, one of

the committee, who suggested other lots, he replied that they had all been examined, and the prices were so high they did not suit Dr. Rush, and that the lot at Broad and Christian streets had been selected because, in the judgment of both Dr. Rush and himself, it combined all the advantages which he wished to secure. He again consulted Judge Strong, who replied July 19, 1869, saying:—"As executor you are guided by the written will. In the exercise of the discretion reposed in you by that instrument, you may regard Dr. Rush's views and wishes orally expressed; but after all your judgment, however it may be made up, must be your guide in matters left to your discretion."

Again argued by Mr. Fraley to change the selection, on the 6th of August, 1869, he replied:—"I deem that situation (the Broad and Christian lot) most expedient under all the circumstances of the case, for I consider its distance from the centre of the city as far outweighed by its other advantages, and I have the consolation of knowing that this decision is in entire accordance with the wishes of the testator, who selected and purchased this lot for this very purpose in his lifetime." The library company themselves knew he had exercised his own judgment in the matter. A meeting was called for the 19th of October, 1869, to vote on the acceptance or rejection of the provisions of Dr. Rush's will. Committees were raised pro and con to influence the opinions of the members when the meeting should take place, and circulars were issued.

On one side it was said:—"But the executor of Dr. Rush, both from the expressed wishes of the testator during his life, as well as from his own judgment of the suitableness of the selected site, is indisposed to change it." The other side said:—"The will gives to the executor the absolute right to select the location and to construct the building, and this discretion has been exercised by selecting Broad and Christian streets as the most suitable spot in the city for the purpose." Against this overwhelming evidence, the positive oath of Mr. Williams, the contemporary circumstances, and the understanding of the library company, how can the conclusion be drawn that Mr. Williams did not exercise his own judgment?

It was after all these things has occurred, and nineteen months after the death of Dr. Rush, the letter of December 30, 1870, was written, the strong hold and fortress of the plaintiff's bill. The object and purpose of this letter are made obvious by the circumstances which have evoked it. Controversy had arisen, and the library company had made several efforts to induce Mr. Williams to revoke his selection, and finally, at a meeting of the company, on the 10th of December, 1870, resolutions were passed, one of which expressed the "earnest hope and request that Mr. Williams would reconsider his intention to build on the site chosen." Dr. Willing, Judge Hare and Mr. Lea were appointed a committee to confer with Mr. Williams, and a correspondence ensued, in which Mr. Williams adhered to his selection. The letter of December 30, 1870, was then written, at the invitation of Dr. Willing, as a formal expression of Mr. Williams' intentions. He restates his convictions and expresses his surprise that he should be again asked to change his intentions, and proceeds to defend himself against censure for refusing to change his mind. Then it is he pleads the sacred character of his promise.

He cannot yield his judgment, but, pressed hard to do so, he appeals to the well-known sensibility of the gentlemen composing the committee, to all honorable engagements, if the case were their own. He repeats also what he has always said, that to change would be in opposition to his own deliberate judgment; and I mean this (he adds) in its fullest sense. This letter, written at the close of the year 1870, long after the controversy had existed in defense of his motives and his reputation, evoked by the direct action of the library company, instead of proving that Mr. Williams acted without judgment and from unconscious constraint, proves the convictions of a mind thoroughly convinced, and a heart that was fixed upon a just purpose. Admit that he was also influenced by his promise to his friend. So he ought to be, when, as he swears, it was an approving judgment. This is a proper influence, and does not show a man void of discretion and so bound by conscience that his judgment is lost in the obligation of a foolish pledge.

How far then will a court of equity go in regarding a promise to a testator as in fraud of his written will?

Here I think the plaintiffs do not discriminate well. That a verbal direction of a testator in conflict with a power contained in his will cannot alter the written terms of the power is beyond contradiction, and to this extent the argument may fairly go.

But that a court of equity can pronounce the verbal direction, and, still stronger, the act of this testator, in the very line of his own power, and a promise to conform to it, *ipso facto*, a fraud on the power, is contrary to reason and the plainest principles of equity. The reverse is true, for it is the province of equity to follow the mind of the testator. So clear is this principle that a court of equity will sometimes convert the devisee even of an absolute estate into a trustee in order to compel him to perform a solemn promise given to his testator to dispose of the property according to his verbal direction. In doing this the written will is struck down to reach the equity that lies in the verbal direction. Such was the case of Hoge vs. Hoge, 1 Watts, 163, where the testator devised an estate to his brother absolutely, under a verbal direction that it should be for the benefit of his illegitimate son.

Chief Justice Gibson cites in his opinion a number of cases where the verbal direction was sustained against the text of the will; one, for instance, where a testator, having devised his lands to his nephew, desired his heir-at-law not to disturb the nephew in possession of certain lands acquired after the execution of the will, and it was so decreed. Now, if a court of equity, to prevent a fraud upon the testator's actual intention, will disregard the written text, how much more consonant to equity is it to regard the solemn act of a testator who has involved his estate in the obligation of a contract in the line of a will, and to carry out its very intent, and how can it regard the promise of the executor to follow the wishes of the testator in this respect, as *ipso facto* a fraud upon the testator's power.

On what principle of sound reason, conscience or equity can the selection of this lot by the executor be pronounced a fraud on the power, or a disappointment of the power—or an undue and improper execution of the purpose of the testator as contained in his written will? How has the promise to the testator vitiated the selection? What provision of the will does it offend? How can we say the selection is not made with a broad and thoughtful foresight? On the contrary, it conforms both to the will and the purpose of the testator. In following the testator's own act of purchase, nothing but the clearest evidence of incapacity in the testator to select, or of folly in the selection, and of blind and of unreasonable obedience in the executor can set it aside. I am willing to concede the authority of all the cases cited for the plaintiff, including Duke of Portland's case. They may be summed up in a single view—that a chancellor will so control a trustee that he shall not disappoint the true intent and purpose of the donor, as gathered from the instrument containing the power.

To execute it otherwise is a fraud on the power. Hence, it is said, "he must execute it *bona fide* for the end designed." It may be a corrollary, also, that an innocent motive will not save the exercise of the power, if it violate the true purpose of the trust. Broader than this, there can be no conception of chancery power in Pennsylvania, where the citizen is secured by the Constitution in his rights of property. When a testator, to fulfil his own purpose, confers an absolute discretion as to his property, it is his right to have the boon executed by his own trustee; and no court can, without clear and adequate cause, displace the trustee without violating the right of property. This is well expressed in the letter of advice of 15th June, 1869, from Judge Strong, under which Mr. Williams acted. "A court of inquiry does not interfere with a discretion reposed, except in cases of clear abuse, when the court can conclude that the donee of a power is acting in fraud of it.

"But when, as in your case, the trustee acts in accordance with his own best judgment, and in so doing follows the positive directions of his testator, it would be altogether unprecedented for a court to interfere and substitute its discretion for that invoked by the will." In this statement he is most distinctly supported by two recent cases decided by this court—Palprop vs. African Church, 12 Wright, 204, and Nagle's Estate, 2 P. F. Smith, 154. To these may be added a few citations from elementary writers. In the recent work of Mr. Perry on trusts the modern decisions are brought up. On page 455, section 508, he says, when the discretion to be exercised is a matter of personal judgment—"The trustees alone can exercise these powers, and courts cannot generally interfere to control mere personal judgments in personal matters." For this numerous cases are cited.

Again, on page 457, section 511—"If the trustees exercise their discretionary power in good faith and without fraud or collusion, the court cannot review or control their discretion." For this twenty-four cases are cited. "Nor will a bill be entertained to compel the execution of a mere discretionary power."—*Ibid.* Mr. Hill, in his work on trustees, Ed. 1846, p. 488, says:—"As a court of equity will not, in general, assume the exercise of a discretionary power vested in trustees, so it will not interfere to control the trustees acting *bona fide* in the exercise of their discretion." He cites many cases for this statement.

In conclusion, there is no ground in fact or in law on which the prayers of this bill can be supported.

The decree of the Court at Nisi Prius is, therefore, reversed, and the bill is ordered to be dismissed at the cost of the plaintiffs.

What the Executor Says.

A representative of THE INQUIRER yesterday afternoy called upon Henry J. Williams, Esq., the executor of the Rush will, at his elegant country seat at Chestnut Hill, and had a lengthy and interesting "interview" with him upon the question of how he intended to act now that the courts have sustained him in his determination to locate the library structure at Broad and Christian streets. Mr. Williams, who was in consultation with Mr. Hutton, the well-known architect, received THE INQUIRER reporter in an affable manner and freely conversed with him upon the subject.

Mr. Williams stated in answer to an interrogatory that "now as he had been sustained in his action by the Supreme Court, and as the avenue was open, he intended to erect the library building at Broad and Christian streets, considering it the best site attainable." "Although," said he, "I would much rather have it at Broad and Chestnut streets."

The lot which has grown to be of some historical interest because of the fierce contest waged in the courts against its selection by the library company, and upon which the structure will be built, has a magnificent frontage on Broad street of 300 feet and a depth on Christian street of 527 feet. The area is fully three acres and a half.

Dr. Rush, after some score or more of other locations and sites had been submitted to him, considered this the most desirable for the purpose of the erection of a grand edifice of any other in the city. Mr. Williams, in answer to the inquiry of the reporter as to when he intended to begin the building, signified that he "meant to proceed with it at once."

In response to a question by the reporter, "if a more central location would not be more eligible?" the executor replied that there was not enough money te purchase a lot in a more central location that would contain sufficient ground for the purpose.

Mr. Williams also stated that he could not give the cost of the building which he intended to erect, as the plans, specifications and estimates had not yet been finished.

The question of the reporter, "In case you build the edifice and have it all ready for occupancy, wil the library company be obliged to accept it," was met with the answer "No;" and to the question, "Do you believe that they would accept it?" the answer was returned "I cannot say as to that point."

Mr. Williams signified his determination to carry forward the work of construction as fast as possible, in order to have the building completed at an early period. Mr. Hutton, well known in his profession, has been engaged by Mr. Williams as the architect, and, under his direction, a plan for the front portion of the library building has been drawn. The front will be of most imposing grandeur, after the Grecian-Doric style of architecture. It will have a length of nearly two hundred and fifty feet, and will be composed of hard granite elaborately finished.

Eighteen magnificent fluted columns will support the structure, ten being situated upon the main edifice and four upon either wing. A grand portico will flank these heavy Grecian columns, the ascent to which will be by marble steps.

The building will doubtless be, when completed, the most magnificent structure of its character in this country, if not, as Mr. Williams enthusiastically observed, "in the world."

Mr. Hutton, the architect, sails for Europe in a few weeks for the purpose of studying some of the wide-famed public structures on the Continent, intending to use the knowledge he thus obtains in completing the plans for the library building. There will be space enough after the edifice is erected for a magnificent lawn around and about it, which will be ornamented with fountains, statuary and beautiful walks.

Interview with Lloyd P. Smith, Esq.

This matter is such an important one, and of so much interest to the public, that a reporter of THE INQUIRER was yesterday authorized to call upon Lloyd P. Smith, Esq., the librarian of the Philadelphia Library Company, and obtain his views upon the situation of affairs, as well as those of a majority of the stockholders. Our citizens are of course anxious to know why a legatee hesitates about accepting a bequest of over a million of dollars, and why the numerous conditions of the will of Dr. Rush will injure the benefits offered by the library company to the public. Mr. Smith was found in his office at Fifth and Library streets, and the following conversation took place:—

"I have called," said our representative, "to ascertain what action the library company will take under the recent decision of the Supreme Court?"

"The library company are not called upon consequence of this decision to take any immediate action," replied Mr. Smith. "It is the duty of Mr. Williams, the executor of the will of Dr. Rush, to put up the building, and then tender it to the company. Then we will have to say definitely whether we will accept it or not."

"Suppose you do not accept?"

"If we do not accept it we are thrown back upon our own resources, which consist of a building fund of $100,000. Of this amount $70,000 is now invested in a lot at Locust and Juniper streets. The remaining $30,000, together with this property, is not sufficient to put up such a fire-proof building as would be necessary for the protection of our books, &c."

"How has this building fund been secured?"

"The money has been contributed by members and others, and by voluntary subscriptions. We have been collecting this sum for seventeen years, with the interest, of course, added."

"Do you think the library company will accept the terms of the executor?"

"I think it will depend altogether upon circumstances. When Mr. Williams' building is put up somebody will have to manage the Ridgway branch of the Philadelphia Library. This company might as well manage it as any one else if they keep their own library elsewhere. It would be possible to have a library of reference at Broad and Christian streets, and a circulating library at a more central point. On the other hand, however, the executor of Dr. Rush takes the view that the books cannot be separated, and that we will have to put all our books down there or none. If that view is sustained there is little doubt but that the company will reject the thing altogether."

"Will that question come before the court?"

"That is not certain. However, it is looking too far ahead. The time to make the opposition will be when the Ridgway branch at Broad and Christian streets is completed and tendered to the company. I understand Mr. Williams is going on at once to make the contracts for the building."

"Do you think it would be well to remove the entire library to Broad and Christian streets?"

"It would never do to take the library down there. It is a library of circulation. A library of reference might do there, if it were amply endowed. The original purpose of this library was for circulation, and in that sense, as a circulating library, its usefulness would be nearly destroyed by a removal."

"Will the company put their collection of books in the building at Broad and Christian streets?"

"The library company will never put their collection there as a whole. They might accept the trusteeship of the Ridgway branch, and might put certain of their old books of reference there, but the modern books, or circulating library proper, will never go there."

"What is the opinion of the stockholders?"

"The opinion of nine-tenths of the stockholders is the same as what I have given you as my own. The main object of Dr. Rush was to secure this valuable collection of books from destruction by fire. It was because the directors thought the principal intention of the testator was not being carried out by a removal to Broad and Christian streets that they filed this bill in equity to restrain the executor. But the court has decided against them."

"If you do not accept what does the company propose doing?"

"The idea is to put this valuable collection in a fire-proof building as soon as we can do so. As soon as the question is definitely settled as to our acceptance or rejection of the Rush bequest an appeal will probably be made to the public for means to complete our fire-proof building on the lot purchased out of the building fund, at Locust and Juniper streets."

"What is the size of that lot of ground?"

"The size of the lot is 110 by 234 feet. It is ample for the existing library and for its increase for hundreds of years."

"What would the building cost?"

"I think a structure such as we would desire, thoroughly fire-proof, would cost about $300,000. This sum would also furnish it properly. The location is a very central one, and convenient for our stockholders."

"The Broad and Christian streets location would not have this advantage."

"It would be so much out of the way at Broad and Christian streets that its utility would be nearly gone. It might be admissible to put such a thing there if there were ample funds to keep it up. Under the will of Dr. Rush all the money must be spent on the building, with the exception of about $150,000, reserved to pay annuities. There is so much left to the executor that it is difficult to know what will be done until the building is finished and we know what funds are left to keep up the Ridgway branch. Under his will Dr. Rush calls his institution the Ridgway branch of the Philadelphia Library, and therefore it might be in a separate place."

"What kind of a building will be erected at Broad and Christian streets?"

"The plans of the testator are referred to in his will, and have been verbally communicated to the executor. These plans call for a granite building with Doric columns. It will look something like the custom house in its exterior. It will have wings also."

"If you reject the proposition what will be done under the will?"

"If we say no, the will provides that it shall be a separate institution, to be called the Ridgway Library, for the benefit of the public. Mr. Williams can found and endow a public library distinct from and entirely independent of us. He has plenary powers under the will. In his will Dr. Rush says:—'I desire that the greater part of my estate may be spent in building a new library building. The annuities, as they expire and fall into my residuary estate, will be amply sufficient for all the legitimate purposes of the library.'"

"Will these annuities be sufficient?"

"They amount to about $10,000 a year, and this will not be ample for the purposes of the library. It would not pay the taxes. Under the law, as passed by the last Legislature, we will have to pay our taxes, and they will amount to $18,000 a year."

This closed the interview, and our representative left the library building.

THE RUSH WILL CASE.

Few contests before the courts during many years have attracted so much genuine interest as the one which forms the caption of this article. Not only every scholar in this community, but every lover of books who had been benefited by the noble beneficence of the venerable Philadelphia Library Company, watched with attention not quite free from a feeling of personal anxiety, the conclusion of this famous suit. It seemed to every such person that the old library they had known, and whose generosity they had shared, whose treasures had been as open to every sincere lover of books as were the air and sunlight, would, if bound by the restrictions of the RUSH bequest, be no more what it was; that it would suffer a change for the worse, lose its habits of good cheer for all classes of readers, light as well as heavy, and grow in new quarters on the lower part of the city.

The community seemed in favor of the plaintiffs in the suit as against the defendant. And yet the defendant has been the life-long friend of the Library, for many, many years one of those honored gentlemen of rare culture, unconquerable integrity and generous helpfulness to all lovers of literature, who made the Library the open-handed host it was and still is. There was no one who had its welfare more at heart than he; there was no one more honored in its counsels than he, no one more deserving of honor. He did not turn away from the Library; it turned away from him. He was made by the will of Dr. RUSH the executor of a great and solemn trust which, in honor, he was bound to execute as the testator instructed him; and, again, he was bound, by his own ripe judgment, to execute it according to the terms of the will, for with those terms he fully coincided.

Dr. RUSH during his lifetime selected the lot at Broad and Christian streets as a site for the library which he proposed to give in trust to the Philadelphia Library Company for the use and behoof of the community. Almost his last expressed wish was that his executor would erect the building there, and his request, so expressed, Mr. HENRY J. WILLIAMS, the executor, promised to comply with. Nothing can be clearer than that the testator's intention and will were that the edifice he meant to give to his fellow-citizens should be built at Broad and Christian streets.

The Library Company, while anxious to obtain the vast sum of which it was to be the trustee, did not wish to have a site chosen for the object of the trust in such a location as would be likely to impair its usefulness. The company objected to the Broad and Christian streets site for the projected library building, and, upon a technicality, contested before the courts the executor's right to adopt that plot.

After various proceedings were had, Judge MERCUR, sitting at *Nisi Prius* decided the case in favor of the view taken of it by the Library Company, but on Saturday last the Supreme Court sitting at Harrisburg, reversed the decision of Mr. Justice MERCUR, decreeing that the executor should be permitted to carry out the testator's and his own wishes in the matter, which will undoubtedly be to erect a new building on the lot at Broad and Christian streets, and if the library company should decide not to accept the bequest with its conditions, Mr. WILLIAMS will proceed to build a library and carry out the provisions of the will as he understands them.

As the interest in this case has been so general we would advise every one to read, with the most careful attention, the opinion of Mr. Justice AGNEW, as printed by us this morning. We can remember no similar production which is clearer in its statement of facts, more concise in argument, more elegant in diction or more convincing in its wise sincerity than this. To the student of law or the student of rhetoric it will serve alike as a model. But its least value lies in these things. It should be received with the warmest approbation, because it determines, now and forever, we hope, that, "in this free State," the solemnly expressed will and intention of a testator *shall be held inviolate.*

That is its chief value to every man who struggles through a long life to achieve a fortune, and who now knows that, though he may have but a single dollar to leave to his survivors, his *will is law.* Elsewhere, and even among the lower courts of Pennsylvania, the practice had grown too common for the *intentions* of testators to be subject to the interpretation of the ministers of the law. The practice will not prevail now, with a declaration which, in every line and word, determines anew the sanctity of a will.

For that reason we welcome this decision of the Supreme Court.

II.

The propositions which must be maintained in order to maintain the decree.

1. Did Mr. Williams act under his promise and not in pursuance of his power?

Complainants in their bill assert the affirmative. Unless they prove it they have no right to relief. Have they done so? They point to the letter of 30 December, 1870, as proof. In that letter Mr. Williams communicates the fact that he did make a promise; but asserts, in the most decided manner, that he selected the lot because, in HIS JUDGMENT, it was most expedient. He does not say that his promise influenced his selection; but simply that having made the selection, because, in his judgment, it was best, he could not voluntarily build elsewhere, on a lot not so good, in violation of his promise to build there and nowhere else. If this case is to be determined, like every other, upon the evidence, it fails for want of proof. Of this there is none. All the evidence is opposed to the allegations of the bill. The witnesses of complainants, Messrs. Whitman and Fraley, testify that from the outset, at least eighteen months before his letter was written, and repeatedly afterwards, Mr. Williams said what in it he asserted—that the lot he had chosen was the most suitable for the purposes of the will. It cannot be claimed that he was then seeking to make evidence for himself; for had this been his design he would have been silent altogether. Mr. Williams swears to his belief in most unequivocal language, and he gives the reasons which induced it. He also swears that with all the lots before him, of which afterwards he knew when it became necessary to make his selection under the will, he had come to this conclusion before any promise was given. In

Aday 22nd A.D. 1873.

Justice conquering Law.

A very curious and interesting case, in which Substantial Justice has triumphed over Technical Law, has just been finally adjudicated in Pennsylvania.

We referred to the interlocutory decision, now reversed at the time it was made, and as the subject is one of far reaching interest we recur to it. Nothing more directly touches the chords of generous Sympathy than a question affecting the sanctity of testamentary dispositions.

There are those who believe that no man has the right to control his property after he is dead. But the mass of the People are of another way of thinking, and thus it is that questions as to testamentary dispossals of property, from Mr Shelley or Mrs. Thelusson downwards always have

have Their Interest.

The Philadelphia case is this, Dr: James Rush was a gentleman of large fortune in the City of Philadelphia. He was a clever man, technically sane, full of crotchets. He had large means at his disposal, and determined to endow a Public Library, engrafting it if possible, on the venerable institution which Dr: Franklin founded, and whose Directors pay for frugal monthly suppers out of their own pockets. Dr: Rush bequeathed $1.000.000 for that (purpose) end, but he did it in a peculiar way. In his Will he made his Executor, Trustee to carry it into effect, and gave to him absolute discretion, unfettered in all respects, as to the choice of the site where the new Library was to be erected. Time rolled on, The Testator still lived, though life was eb-

ebbing fast, and his mind being bent upon his Library and its location he purchased a lot which he thought was suitable.

In doing so he did what he had a perfect right to do, but he did what nobody but an eccentric man would have done. If we New Yorkers can fancy Allen Astor putting his library on Avenue B. or Allen Lenox his near "Christopher Street Ferry," we may understand Dr. Rush's relegating his Library to Abyamensing.

Still it was his choice, and there he determined, as he had a right to do, to locate his "charity."

In time "Pallida Mors" was knocking fiercely at his gate — Dr. Rush was dying.

Pennsylvania has in some respects a legislation peculiar to itself.

During the Know knothing excitement of 1854-5. a law was enacted

and

and is still in force which provides that no devise or bequest to a "charity" made within one calendar month of the Testator's death shall be valid. A dying man, though in possession of all his faculties, in Pennsylvania cannot bequeath a cent to any but his relations or some other individual.

Dr. RUSH, moribund sent for his Executor, his brother in law, a gentleman of the purest character, told him what he had done in the purchase of the Library Site, and conscious that no codicil he could make would be valid, solicited from him a promise that he in his discretion, would put the library on the recently purchased property. The Trustee gave the promise, and the dying man, as we read in the record said "Thank you Harry; I shall

now

now die contented," and within a few days did die.

The Will proved," letters testamentary" issued, the Executor qualified, he announced his determination to keep the promise he had given. The Library must go to Moyamensing.

The Franklin Library Company was aghast, as well it might be. Translation to Moyamensing was simple torture to ancient Philadelphians. Refusing the Rush legacy exceeded bibliothecal heroism.

In this exigency they determined to go to Law. They filed a Bill against the Trustee praying for an injunction against him as to "Moyamensing" on the ground that the parol promise to his dying friend unduly embarked his discretion, and asking the Court sit-

-ting

-ting in Chancery, to order the Li-
brary somewhere else.
A Master in Chancery (P. Pem-
berton Morris.) reported affirma-
tively. The Chancellor (Judge
Ulysses Mercur.) sitting alone,
affirmed his Report, and it real-
ly seemed as if in accordance
with a purely technical rule of
Law, the Intention of the gene-
rous Testator was to be frustrated,
and the Franklin Library Com-
pany were to get the legacy not
cum onere but actually in spite
of their benefactor's wishes.
The Appeal taken has been
within the last few days decided
by the Court of the last resort,
and the sound and wholesome
doctrine has been asserted that
a Testator's well ascertained in-
tentions, no matter how expressed,
shall be carried out, and that

The

the "charity" which receives a benefaction shall honestly comply with the conditions which the benefactor imposes. This we call "Justice triumphing over Law."

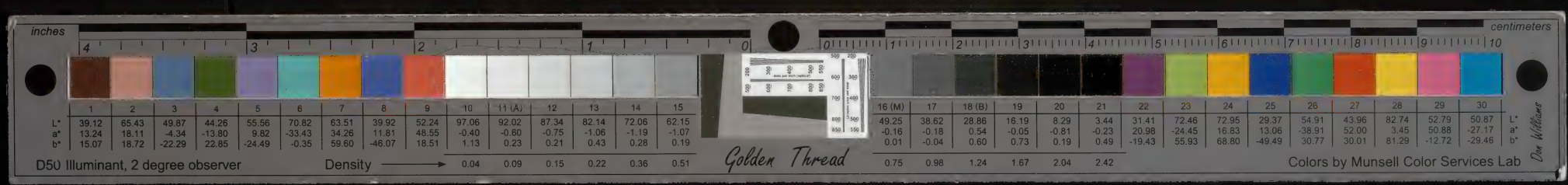
Let us rejoice that Mr Astor had no crotchets, and that Mr Lenox is in life organizing his own great "charity".

New York World.

Thursday May 22d

A.D. 1873.

W B, Reed.



	1	2	3	4	5	6	7	8	9	10	11 (A)	12	13	14	15
L*	39.12	65.43	49.87	44.26	55.56	70.82	63.51	39.92	52.24	97.06	92.02	87.34	82.14	72.06	62.15
a*	13.24	18.11	-4.34	-13.80	9.82	-33.43	34.26	11.81	48.55	-0.40	-0.60	-0.75	-1.06	-1.19	-1.07
b*	15.07	18.72	-22.29	22.85	-24.49	-0.35	59.60	-46.07	18.51	1.13	0.23	0.21	0.43	0.28	0.19

	16 (M)	17	18 (B)	19	20	21	22	23	24	25	26	27	28	29	30	
L*	49.25	38.62	28.86	16.19	8.29	3.44	31.41	72.46	72.95	29.37	54.91	43.96	82.74	52.79	50.87	L*
a*	-0.16	-0.18	0.54	-0.05	-0.81	-0.23	20.98	-24.45	16.83	13.06	-38.91	52.00	3.45	50.88	-27.17	a*
b*	0.01	-0.04	0.60	0.73	0.19	0.49	-19.43	55.93	68.80	-49.49	30.77	30.01	81.29	-12.72	-29.46	b*

PUBLIC LEDGER
AND DAILY TRANSCRIPT.
Philadelphia, Monday, July 20, 1874.

☞ PERSONS leaving the city during the summer can have the Ledger mailed to their address by ordering it at this office. Terms thirteen cents per week, or fifty cents per month.

LOCAL AFFAIRS.

RIDGWAY BRANCH OF THE PHILADELPHIA LIBRARY.—Immediately upon the final settlement of the legal questions which arose when Mr. Henry J. Williams announced his intention of conforming to the desire of the late Dr. Rush, in respect to the site for the Ridgway branch of the Philadelphia Library, contracts were made for the erection of the building from drawings prepared by Mr. Addison Hutton, architect, and the work is now in such an advanced state as would seem to require more than a mere passing notice. The structure is being erected on a lot of ground bounded by Broad and Thirteenth streets on the east and west, and Christian and Carpenter streets on the north and south, and occupies the central portion of it, the principal front being 120 feet from the curb on Broad street.

In the will of Dr. Rush, he expressed a wish that the building should not only possess "strength, durability and accommodation, but also be of sufficient magnitude for any future or contingent, but not an ambitious or competing increase of the library, in order to prevent, if possible, its being torn down in twenty years and the lot sold at a speculative profit." A glance at the structure which is in progress will assure that Mr. Williams, the executor, is carrying out that wish, and that it will possess "strength, durability and magnitude."

The exterior walls are of granite and the interior of brick, and all present a massive appearance. Those upon which the iron supports of the main floor will rest are 14 feet high.

Facing Broad street the building has a front of 220 feet, and the extreme depth is 105 feet. The principal facade will be a portico, enclosed by granite columns, the base of which will be 12 feet above the pavement, and the apex of the main pediment 55 feet high. There will be eight columns fronting the central building and four on each wing, 30 feet high, in the Doric order of architecture.

The central facade is 89 feet wide over the base of the columns, the additions 40 feet each, and they are separated by 24 feet of plain wall.

From the base of the columns the wings will be 46 feet in height to the apex of the pediment, which is about 7 feet less than the elevation of the chief edifice. The portico will be reached by a flight of broad stone steps the full width of the central facade, and before entering the main hall a vestibule 36 feet long, 10 feet wide and 14 feet high, must be passed. Three glass doors admit of entrance into the hall, which is to be in the form of a cross, having a length of 84 feet north and south, a width of 60 feet east and west, the square of the intersection being 35 feet, with a height of 44 feet. This will be surrounded by a gallery 15 feet high from the floor, from the front of which will rise twenty-four Ionic columns, 17 feet high, designed to be of polished variegated marble.

To the left on entering will be librarian's room, 22 feet square, and his assistant's and delivery desks immediately adjoining in the north arm of the cross. At the back of the librarian's department, and occupying the whole of the north portion of the building, will stand the bulk of the books which are to be arranged in alcoves on galleries, and lighted mainly from the roof. Alcoves and wall-cases for books will also be placed in the gallery surrounding the main hall.

Near to the Librarian's will be rooms for ladies and gentlemen, and book receiving and cataloguing apartment, to which the books will be brought from the basement.

A marble staircase, 12 feet wide, will lead from the Hall to the Memorial and Directors' rooms in the south wing, second floor. In the former room will be deposited the personal effects of the late Dr. Rush. This is in accordance with the direction of the testator, as found in the first codicil to the will. His language is:

"I direct my Executor to have a marble slab, with the following inscription on a plain ground with a border of simple moulding, without any surrounding ornaments, placed and maintained on some appropriate part of one of the interior rooms of the new library building, in which my private library and other personal effects are to be preserved.

"The Ridgway Branch
of the
Philadelphia Library,
A Monument to the Memory of
Jacob Ridgway,
and his
Daughter, Mrs. Phœbe Ann Rush."

These apartments will be decorated with marble columns, and, like the main hall, will be lighted from the roof, the ceiling being 17 feet in height.

On the main floor of the south wing will be the principal reading room, 72 feet long by 32 feet wide, and 20 feet high. It will be lighted by windows on the west, south and east ends. There will be a smaller reading room in the same wing, and retiring rooms also.

It is proposed to put the remains of Dr. Rush and wife in some part of the building. This will probably be in the main hall, opposite the front entrance.

At present the walls have reached a height of nearly thirty feet from the ground line, and the work is progressing as rapidly as its substantial character and magnitude will admit of. It is not anticipated that the building will be ready to receive the roof before the summer of 1875, as out-door operations have to be entirely suspended during the winter months.

The enclosure is now partially completed. Along Thirteenth street, and midway between it and Broad street, a granite wall has been erected, which is seven feet high, with dressed stone capping. The rest of the enclosure will consist of a low dressed stone curb and a massive wrought iron railing. Along Broad street, the ground between the enclosure and the building will be laid chiefly in grass, with broad avenues leading to the central entrance.

MADAME RUSH.

HER DRAWING ROOMS UNDER THE HAMMER

Reminiscences Suggested by an Executor's Sale of the Old Rush Mansion House on West Chestnut Street.

A BYGONE LEADER OF THE CITY'S HAUT TON

EXECUTOR'S SALE, ESTATE OF DR. JAMES RUSH.—On Tuesday, July 27, at 12 o'clock noon, at the Philadelphia Exchange, the large and valuable four-story brick mansion, with stable and coach house, No. 1914 Chestnut street, 102 feet 8 inches front, 235 feet deep to Sansom street; two fronts, well and substantially built; the situation is very desirable for a hotel or stores. Immediate possession. Full particulars in handbills.

To-day at noon the auctioneer's hammer will sell, or perhaps withdraw from sale, the once home of Madame Rush. From beneath the poise of his inevitable stroke perhaps some pleasant remembrances of an old time may be stolen, and with this idea let us talk about what the old Rush mansion was, who once made it merry, and who they were whose absenec has made it to-day a dreary old house, abandoned to rats and decayed servants, the cash-begetting object of an executor, and the ware of an auctioneer. Benjamin Rush, a signer of the Declaration of Independence, was a noted man in his time. He was a physician by profession, and distinguished above his fellows, because of his courage and his intelligence, His reputation, not only as a physician but as an author, extends over the English speaking world. He died at an advanced age, full of honors, the esteem of friends and all that makes life worth living for. He left behind him five children: James Rush, who embraced his father's profession; Richard, who became Attorney General of the State, Minister to France and to England, and was a candidate for the Presidency on the Anti-Masonic ticket; Samuel, once Recorder of the city; and William, also a physician; and a daughter, who married Henry J. Williams, who, at an advanced age, now enjoys in retirement the sober evening of a life spent in the intricate pursuits of the law. There was not a great deal of money possessed by Dr. Benjamin Rush, and therefore when young Dr. James married Phœbe Ann Ridgway, whose father was possessed of unlimited means, it was thought a good match. She was a fair, well-formed young woman, not particularly pretty, but attractive, with buoyant health. Her father was Jacob Ridgway, a Jerseyman by birth, who accumulated an immense fortune by mercantile ventures during the French revolution, part of which time he was United States Consul at Antwerp. Besides Mrs. Rush he had a daughter who was first a Mrs. Roach and afterwards married Dr. Barton, since deceased, and a son John, who, with Mrs. Barton, now resides in Paris, and another son, who died in early manhood. Dr. James Rush, who married the girl full of life and health and strength, was a curious compound of eccentricities, and entirely unfitted by natural disposition to give her those loyal attentions, those manly kindnesses, without which women naturally rebel against their legal lords. The result was natural and inevitable. Dr. Rush and Mrs. Dr. Rush, instead of being the mysterious one in such cases contemplated and intended by law human and divine, became two, and while living under the same roof, and enjoying each the esteem and friendship of the other, pursued alone

their solitary ways. He devoted himself to his books and she became a leader of fashion, a queen of society, and lived this hot-house existence until, in a smothering room in a hotel at Saratoga, she, unattended by the care and love of kindred, even the kindness of friends, passed her life away. The well-known Rush mansion, on Chestnut street, above Nineteenth, was the creation of her taste; a very plain and almost ugly brick building it is without, and within more noticeable by the size of its rooms than from any adornment given them other than by the furniture and paintings. It was here that Mrs. Rush gave her weekly receptions during the winter seasons from 12 to 3 o'clock, and occasionally balls. Here were gathered all that was brilliant and witty, and above all select, that Philadelphia in those old days could produce. From the Rush side of her house Mrs. Rush was entitled to be one of that mystic circle of democratic aristocrats for which, since the days of William Penn, Philadelphia has been particularly famous, and, therefore, to have the *entre* to her receptions was in society like the accolade of a knight. Yet she was just in her selections and always recognized the divinity of intellect. She was ever happy to be surrounded by artists and literary men of recognized ability even if their purses were unladen. Of rare conversational powers it was with such that she chose to exercise herself. As she grew old her affections seemed to go out towards young people, and she was always surrounded both here and at Saratoga by young men and maidens, to whom she was on more than one occasion a helping friend. To the Philadelphia of twenty years ago she was as well known as the vane of the State House steeple. Quite fleshy and endeavoring to hide the wrinkles and paleness of age by rouge she was seen daily on Chestnut street. She dressed very expensively but not always with the best taste. With her always was some young man of good looks (for she had a fine eye for manly beauty), and all heads turned as she passed. She was the recognized leader of Philadelphia fashion. Towards this position she struggled and securing it she enjoyed its hollow honors without a rival until at 70 years of age she died. A more desolate place than this abandoned house, West Chestnut street, it is hardly possible to find. On the upper floor is the room in which Dr. Rush, after a life devoted to the consumption of books, died and left behind him only a will marked all over with his own peculiar idiosyncracies. In it he termed the newspapers "the vehicles of disjointed thinking," a remark, if not true, at least original, and broke the hearts of the shareholders of the Philadelphia Library by offering them a million of money they could not touch without hurting themselves. Through the rooms of his old mansion yesterday a TIMES reporter, accompanied by the inevitable Biddy, wandered. Through parlor, drawing-room, library, dining-room and bed chambers he went. The walls that resounded for so long with the ringing laugh of fair women and the deep tones of wooing and admiring men were silent. Yet it was not difficult to imagine how the naked boards of the floors once kissed the steps of the pretty feet of pretty women, and how the bare walls enjoyed the whisperings of the old story which men will tell and to which women will listen ever since the tale was first whispered in Eden. There is a garden inclosed on either side by a high wall, lined with a conservatory and at the fourth side by outhouses very prettily finished in a sort of Swiss style, are scattered bronzes, paintings and statuary, formerly gathered from the capitals of Europe, evidencing the great wealth if not the taste of the collector. This mansion, from the exterior, always draws the attention of the stranger as he passes out Chestnut street, for it differs, like its once master, from all its neighbors, with stiff high balustrated steps and windows barricaded to the top with iron bars, strong enough to fit a prison. If the property is sold, as it doubtless will be, for the law, as a rule, does not wait for a good price, another of the special landmarks of the old city will go down before the vandal hand of the modern-making alterer.

If the parties to litigation waive their objection to a juror interested in the cause, no one else can complain, and the verdict will be valid. Dr. Rush, who alone was interested when he selected Mr. Williams, waived all objections on the ground of bias, and the complainants, whose rights, if any they have, subsequently attached, are not entitled to an impartial juror, though such be the common law right of contestants in a court of justice. Yet they demand the *blank* mind which in a neighboring state has brought such discredit upon the whole system of trial by jury.

With a juror the formation and expression of an opinion would disqualify. Would such an expression prior to Dr. Rush's death afford ground now for a motion to dismiss Mr. Williams from his executorship? No judge feels himself disqualified from sitting in review of cases decided by himself though sharing man's usual unwillingness to be proven in the wrong. As a juror could not do this, it is apparent that many objections are founded on arbitrary common law exemptions, not upon experience of fact.

Interest disqualifies a juror, not because of his inability to form a correct opinion, but through the fear that he will, in futherance of his own private ends, give a verdict *contrary* to his judgment. Can we fear that a man, so sensible as Mr. Williams has shown himself, to the obligations of conscience, would, in violation of his sworn duty, though his judgment pointed to one site, disregard it for another? The same conscience which impresses upon him the obligation of a mere promise, would enforce upon him the still more solemn obligation of his oath.

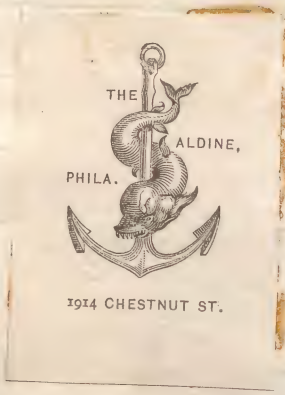
3. Were the Library Company entitled to any better judgment than that possessed by the executor at the time it became necessary for him to exercise it?

We have already said that the measure of expediency

The title is unexceptionable and the house free from incumbrances
Please direct your answer to
me at Chestnut Hill.

Mr. I. B. Lippincott
719 Market St.

A.D. 1876. Apl. 6th. This day Mr. I. B. Lippincott paid $110.000 — Cash, for Doctor Rush's house which he converted into the Hotel called "The Aldine".



(Original draft.)

Febry 21. 1876.

My dear Sir

with ~~some~~ misgiving I have determined to accept your offer of $(110.000) One hundred and ten thousand dollars for the house 1911 Chestnut St. — This includes all the Real Estate and fixtures, with the single exception of the Carved Mantel piece in the dining Room.

The Mirrors and Chandeliers, are not sold with the house unless they are so built in the walls so as not to be removed without breaking it

The payment is to be in cash

Yrs truly

H. D. Williams
Exr of D. Rush

over

The Times

PHILADELPHIA, AUGUST 18, 1876.

THE HISTORIC RUSH MANSION.

An Effort to Prevent Mr. Lippincott from Making His Proposed Alterations.

In the Common Pleas, No. 4, before Judge Thayer, yesterday, was argued an application for an injunction to prevent Joshua B. Lippincott from proceeding with his proposed alterations of the Rush mansion. The complainant set forth that by the act of April 28, 1870, it was provided that the south line of Chestnut street shall be 539 feet southward of the south line of Market street, between the rivers Delaware and Schuylkill, provided that this act shall not interfere with any building now erected on the south side of Chestnut street; and it was argued that the alterations which defendant proposed to make on the building, as the changing of the doorway, the extension of the height to seven stories, the placing of balconies at the upper stories, the substitution of a different kind of wall for the conservatory, etc., were so extensive and of such a character as to bring the building within the meaning of the act of Assembly, the lines of the present building being about three feet nearer Market street than the distance named in the act.

For the defense it was maintained that these alterations did not bring the building within the act, because no change is to be made on the line of the foundation or walls of the building, and that the rights of the public will be no more encroached upon than they are at present.

Judge Thayer held that the act of Assembly was to receive a reasonable construction, as if it read that no new structure should be erected within the limit prescribed in the act. Here the walls of the old building are to be used, and the extension in height, the substitution of permanent walls for the conservatory for those of a different kind already there, and the alteration of the interior portion of the house to the purposes of a hotel, are not such a change and alteration as would bring it within the act of 1870. The building remains substantially the same, and the act in question was not intended to prevent alterations of any kind of the buildings already erected. The motion for an injunction was dismissed.

come rotten. The person nominated as executor, is the man as he shall chance to be, with all his prejudices and imperfections, when the time for him to assume his office arrives.

If the will be not altered, we may presume that a testator, acquainted with the fact of a diminution of mental force or quality, was willing to waive all objections on that score.

The will, in regard to the person designated—his faculties and characteristics—speaks as of the time of the testator's decease. It is hardly necessary to argue a proposition so elementary, which is to be found in all the text books. The Master so reports on page 73. "A will speaks "from the death of the testator, and not from its date, un- "less its language, by fair construction, indicates the con- "trary intention." Canfield *vs.* Bostwick, 21 Conn. 550. The beneficiaries can demand nothing more than the honest exercise of such faculties.

We may more than doubt whether an executor, whose judgment, without the testator's knowledge had become warped, could be removed from his office; but if a testator, specially notified of the fact, refused to revoke the appointment, no court would listen patiently to a demand for his removal for that cause.

The courts have gone so far in sustaining such nominations, though the rights of *creditors*, for whom the testator was not entitled to speak, were involved, that only because of their unwillingness to presume that the testator's failure to revoke was deliberate and in view of the fact, have they appointed receivers, where long after the making of the will the executors had become bankrupts. Here, however, as the bias resulted from the testator's own act, he must certainly, against his own beneficiaries, be presumed to have intentionally and deliberately retained his executor.

"The Spiritual court cannot refuse to grant probate of a "will to a person appointed executor on account of his "poverty or insolvency." "The consequence is, the court

708 Walnut St
18 March 1876.

My dear Mr Williams,

I have examined the three mirrors in the Rush mansion — two in the Hall and one in the front south room — and am of the opinion that they pass to Mr Lippincott as part of the freehold purchased by him —

I enclose the deed for your execution. The title is right and the searches clear. You can arrange a day for settlement with Mr Lippincott —

Very Truly Yours

John G. Johnson

Henry E. Williams Esq

DAY, MARCH 29, 1895.

THE ALDINE HOTEL CLOSED

CENTRAL WALLS FOUND TO BE OVERLOADED AND WEAKENED.

A SURPRISING DISCOVERY

THE GUESTS SEEKING QUARTERS ELSEWHERE.

STATEMENT OF ARCHITECT HUTTON

THE HOTEL TO BE ENLARGED AND IMPROVED AT ONCE.

The visitors in this city yesterday who went to the Aldine Hotel for accommodations during their stay were doubtless much surprised to see on their arrival there a large white placard on the marble steps leading from the vestibule, which bore the single word, "closed."

At the office, which is still open, they were informed that the hotel was closed on account of repairs which are contemplated. That a prominent hotel should close its doors right in the midst of the season and turn its guests away in order to make repairs naturally aroused suspicion at such an unbusiness-like proceeding.

The truth of the matter is, however, that it was suddenly discovered last Monday night that the two walls in the central part of the main building running east and west were badly cracked, and, consequently, weakened. Mr. S. Murray Mitchell, the proprietor, was, naturally, much alarmed at this discovery, and, fearful of imperilling the lives of his guests, he at once notified them of the condition of affairs, and asked them to move as quickly as possible in order to allow him to close the house for repairs.

Such guests as could go to their homes in the city or vicinity did so at once, and those who were obliged to make some arrangement for the future were transferred to the wings, where there is no danger. The dangerous portion of the building was at once closed up, and no one was allowed to enter the stories above the ground floor. For further security a watchman was placed at the entrance, and posters, with the word "closed" on them, were pasted on the doors.

How the Danger Was Discovered.

The discovery of the weakened walls came about in this way: The hotel property belongs to the J. B. Lippincott Estate, and is held in trust by the Pennsylvania Trust Company. About March 10 Mr. Mitchell asked the owners to make some necessary repairs in the building. He asked to have the dining room raised up to the first floor, to have new bath rooms placed throughout the house, and, in fact, to have the interior of the building altered to a considerable degree.

The company acceded to Mr. Mitchell's request, but it was not until about March 21 that Mr. Addison Hutton, the architect, was employed to examine the building and make plans for the proposed changes. In his examination Mr. Hutton found that the two centre walls had at all times been overloaded by the changing of the private residences into a large hotel. The walls were weakened in many places and badly cracked.

Under such circumstances the architect did not deem it advisable to make the alterations and so informed Mr. Mitchell of their dangerous condition. The walls were evidently much weakened also by the disastrous fire which occurred there on May 14, 1893, when many of the guests barely escaped with their lives.

The hotel could possibly have been conducted with safety until June or July, but Mr. Mitchell decided it safer not to take any risks and will close the hotel at once. He considers that he escaped luckily when the hotel caught fire and he does not care to imperil the lives of any of his guests.

Guests Seek Quarters Elsewhere.

Closing the hotel in the midst of the season is very unfortunate for the proprietor. The spring of the year is the best season for the Aldine, and the hotel has been unusually crowded during the past month. At the time Mr. Mitchell notified his guests of the dangerous condition of the building there were 187 people in the hotel. By last evening all but 75 had secured quarters elsewhere and those remaining were quartered in the wings and the addition on the west.

Mr. Mitchell expects that these will have found accommodations elsewhere by the first of next week, when the hotel will be turned over to the mechanics. Many of the hotel's guests have opened up their homes in the country, and will go there at once. Others took quarters at the Rittenhouse, and many are scattered about at the other hotels, the Colonnade, Stratford, Continental and Lafayette receiving the greatest number.

It was expected to begin the repairs by June 1, and have them completed by the time the hotel opened in the fall. As it is, the plans for the alterations are in the hands of Mr. Hutton. The interior of the hotel will be completely remodelled, and the inside walls will be of iron or steel.

A New Building Contemplated.

For some time plans have been prepared for an addition to the hotel on the west. The Barton property, 1920 and 1922 Chestnut street, is to be built up and annexed, and it is now probable that this work will be done along with the repairs on the hotel proper.

The plans for the new building are rough as yet. It will, however, be ten stories high and fire proof throughout. It will front on Chestnut street and run all the way back to Sansom street. The new building, as well as the repairs in the old one, are to be completed, if possible, by next fall, in time for the opening of the season.

Mr. Mitchell said yesterday that, as usual in such cases, false reports had been circulated which had terrified the guests unnecessarily. It was reported that the building was falling down, and that the Building Inspectors would allow no one to remain in the hotel, and that the guests were turned out en masse. Mr. Mitchell does not consider the building dangerous, and slept in his usual room last night. He does not, however, wish others to take any chances. The Building Inspectors know nothing of the case, as they acknowledged last evening, and many of the guests are still in the wings and addition of the house.

Statement of Architect Hutton.

"The work of improvement will begin immediately," said Architect Addison Hutton last evening, "and the hotel will be emptied, with the exception, perhaps, of the wing on the south.

"There is nothing like a panic in the place, but the house must be empty while the changes are being made. The old Rush mansion was altered for hotel purposes in the early 70s, and the parlors and lower apartments of the hotel are even now practically as Madame Rush left them.

"Everything is indefinite at the present time, and I can only tell you that plans are being developed with a view to remedying some defects which have existed in the internal construction of the house, and which have increased since the fire two years ago. The Chestnut street portion will be altered, though it is not decided yet whether the front itself will be changed or not. It is intended to use fireproof construction solely, and an effort will be made to retain the unique arrangement of the old parlors, etc., as they existed in the original Rush mansion. The tiling, fresco and general interior decoration will remain practically the same.

"The capacity of the house when the changes are complete will be considerably enlarged, and, while the original family character of the hotel will not be altered, it is possible that transient guests will be encouraged.

"As far as I know the Building Inspectors have not seen the place."

WASHINGTON, March 28.—The President

1876. Dec 26 '76

THE RIDGWAY LIBRARY.

The Result of the Bequest of Dr. Rush—The Splendid Building Nearly Finished.

The litigation between the Library Company of Philadelphia and the executors of the will of the late Dr. James Rush some years ago, regarding the location of the Ridgway branch of the Philadelphia Library, has made unnecessary an account of the bequest of Dr. Rush, to whose munificence the city is indebted for one of its most lasting and noble institutions; but a description of the building which has been raised as an enduring monument to the great philanthropist will be of interest at this time, when it is nearly finished.

The site for the library was selected by Dr. Rush before his death, and occupies the entire square, bounded by Thirteenth and Broad, Christian and Carpenter streets, and is enclosed on three sides by a granite wall, capped with dressed blocks of the same material. Along the Broad street front is an iron fence, with solid granite posts. The building, constructed of Cape Ann and Quincy granite, is in the Doric style of architecture, and consists of a centre with north and south wings.

A broad flight of granite steps leads up to the main or Broad street entrance. The pediment of the centre is supported by eight and of each of the wings by four Doric columns. The columns stand on a basement eight feet high, fixing the level of the main floor at fourteen feet elevation from Broad street. The diameter of the columns at the base is five feet; height, including capital, thirty feet; intercolumniation, twelve feet three inches; height of entablature, twelve feet three inches, and angle of pediment, 13°. The exterior of the building is almost severely plain, the only ornamentation being a triangular scroll, cut in granite, in the pediments of the centre and wings. The back or east front is similar in general design to the Broad street front, but without the columns. The north and south wings show a tetrastyle arrangement of pilasters with pediment over.

The north wing will be used for the storage of books, the south for reading-rooms, and in the centre is the main hall in the form of a cross. In the western arm is the entrance and vestibule; in the northern is the librarian's department; in the eastern a room for a mausoleum, and in the southern is the grand staircase to the gallery of the main hall, and to the memorial and directors' rooms on the second floor of the south wing. The inside measurement of the north wing is seventy-one feet by thirty-two feet six inches. The centre of this wing is open to the ceiling, which is thirty-four feet high, and around the sides are three tiers of galleries, ten feet wide, on which the books will be arranged in the form of alcoves. There is also a space between the north wing and the centre twenty-five by sixty-nine feet, which may be used for storage of books, and wall-cases may be put around the gallery of the main hall. There is storage capacity for 400,000 volumes. The reading room in the south wing is seventy-one feet by thirty-two feet six inches, with twenty-feet ceiling. It has two open fire-places and at either end retiring rooms, lavatories, etc., for ladies and gentlemen. In the angles of the centre portion are four rooms, twenty-two feet square and fourteen feet high. Two of these are for study rooms—one for the receiving and cataloguing of books and one for a private room for the librarian. The arms of the main hall are eighty-five feet north and south and sixty feet east and west, thirty-five feet wide and height to ceiling forty-six feet. There is a broad gallery around the main hall, from which arise twenty-four Ionic columns and pilasters, supporting the ceiling and the interior cornice, made in ornamental style of galvanized iron. Over the interior cornice light is introduced by the Clevestory arrangement, which is superior to the ordinary level skylight. The ceiling is of galvanized iron, paneled and painted in colors. The entrance vestibule is floored with English tiles, in neat patterns. The wainscoting around the main hall and reading rooms is richly paneled with oak wood, and the grand staircase and the entablature of the main hall are of the same material. The railings of the stairs and around the main gallery are of bronze. The interior, except the main ceiling and the Ionic columns, will be finished without paint, and the painting of ceiling and columns is one with a view to a very simple effect. The ceiling lights over the memorial and directors' rooms are of rich stained glass work; but on the whole the effect of the interior will be chaste and simple, entirely subordinate to the use of the building, in which it was intended by its founder that the books should be the important feature.

Under the whole building is a basement, with ceiling thirteen feet in height, in which is the steam-heating apparatus. The floors are laid on brick arches constructed over iron girders, and the building is substantially fireproof.

Mr. Addison Hutton is the architect of the building; H. Barker & Bro. did the granite work; Samuel B. Drake the brick work; the roof-trusses, roof and iron ceiling was the work of the Philadelphia Architectural Iron Company, and Kemp & Garrison, carpenters, are now finishing the wood work.

When the building is completed the executors'

work will be done, and the Philadelphia Library Company will come into the possession of this magnificent structure, and an ample endowment for the purchase of books, etc., etc. The building will be finished and ready for furniture early in the spring.

POSITION OF THE PHILADELPHIA LIBRARY.

Dr. Rush's will provided that if the Philadelphia Library Company should decline to accept his residuary estate it should be used "to found and endow a public library, entirely distinct from and independent of the Philadelphia Library Company, to be named and called the Ridgway Library." In view of the fact that some doubt has been expressed as to whether the company would accept it or not a TIMES reporter called on some of the prominent officers of the company yesterday. The following is the result of his inquiries: The need of a fire-proof building to contain the one hundred thousand volumes in the Philadelphia Library has been felt for many years, and in 1855 a subscription was started for that purpose. In 1864 the fund received a bequest from the late Joseph Fisher of $54,488.12. The fund now amounts to $105,000. Some time before Dr. Rush's death the company purchased a lot on Locust street, below Broad, as a site for the new building. When Dr. Rush died and the company learned that they had become his residuary legatees they were very much relieved and considered their financial difficulties at an end. But when it was found that by far the greater part of the estate was to be expended in the erection of a building, and that the site chosen was in the lower part of the city, inconvenient of access to the great majority of the stockholders, the acceptance of the bequest did not appear so desirable. A prominent officer said to the reporter they would have a white elephant on their hands and have to maintain a magnificent folly and pay enormous taxes with a very small income. Suit was brought to restrain the executor from erecting the building on the site proposed, but the Supreme Court decided adversely to the company. When the last finishing touches are put on the building the executor, Mr. Henry J. Williams, will file a bill in equity, asking the court what disposition he shall make of it. The stockholders of the Philadelphia Library Company will then have to decide as to their acceptance of the bequest or not. Within the last few years some annuities charged upon the estate have fallen in, and there is now about $300,000 awaiting their acceptance. None of the gentlemen whom the reporter saw would express an opinion as to the action of the stockholders; they said it would be like predicting the result of a State election. A prominent officer said that some bitterness of feeling had grown out of the litigation, but he felt confident that the matter would be settled in a smooth and satisfactory way.

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Paris 15 May 1877

Dear Mr Williams

EARLES' GALLERIES—816 Chestnut Street.

Philadelphia, June 19th 1877

Henry J. Williams Esq

Dear Sir

By the time this reaches
you the Centennial Exhibition
will be closed & pictures
removed to their
respective homes &
Earles' Galleries
will be open again.
for an Exhibition
of two months.
I write anxious
& Mr Clarke
Mrs Clarke still
our legend
at home.
- all interested
work commenced
Respectfully
Mrs Jones, Kane York
Mrs Fleck, Mrs Burdsall
Mrs Fleck Mrs Burdsall
Mrs Fleck Mrs Burdsall
Mrs Fleck

in their present condition

Yours very respectfully

James S Doyle.

Paris 15 May 1877

Dear Mr Williams

Mrs Barton has arrived and before replying to your letter, I have as you desired consulted with her; her objection to removing her father's remains from their original place of rest is quite as strong as mine; it would be repugnant to us both that such a thing should be done and what my father from what he knew of his character would himself never have wished. his ideas on such matters were very simple. We are well convinced that he would have been unwilling that his body should rest in so conspicuous a position, inconsistent with his habits and tastes and there seems to be no reason why it should be removed to the Library, which was built by Dr Rush with Mrs Rush's fortune, our father not having had anything to do with the erection or endowment of it. We therefore both of us most earnestly desire that his remains may be allowed to remain undisturbed at Laurel Hill. I hear that you enjoy good health, I hope you will

continue to do so, Mrs Ridgway whites with in kind regards — I remain yours very truly

John J. Ridgway

Augt 7th: A D 1877. This day at 1. P.M. Dr: & Mrs: Rush's remains were deposited in the vault in the Library Building at Broad & Christian Sts: The Doctor's coffin was perfectly sound, Mrs: Rush's being decayed was placed in Cedar case.

J. S. F.

uilding. The plain marble slab which covers he remains of the Doctor and his wife, on the astern side, and over which the light is shed hrough a window of stained glass, bears the ollowing inscription:

"Sacred
to the memories of
MRS. PHŒBE ANN RUSH,
daughter of
Jacob and Rebecca Ridgway,
and wife of
James Rush, M. D.,
born December 3d, A. D. 1799;
died October 23d, A. D. 1857;
and of
JAMES RUSH, M. D.,
third son of
Dr. Benjamin and Julia (nee Stockton) Rush,
born March 15th, A. D. 1786;
died May 26th, A. D. 1869."

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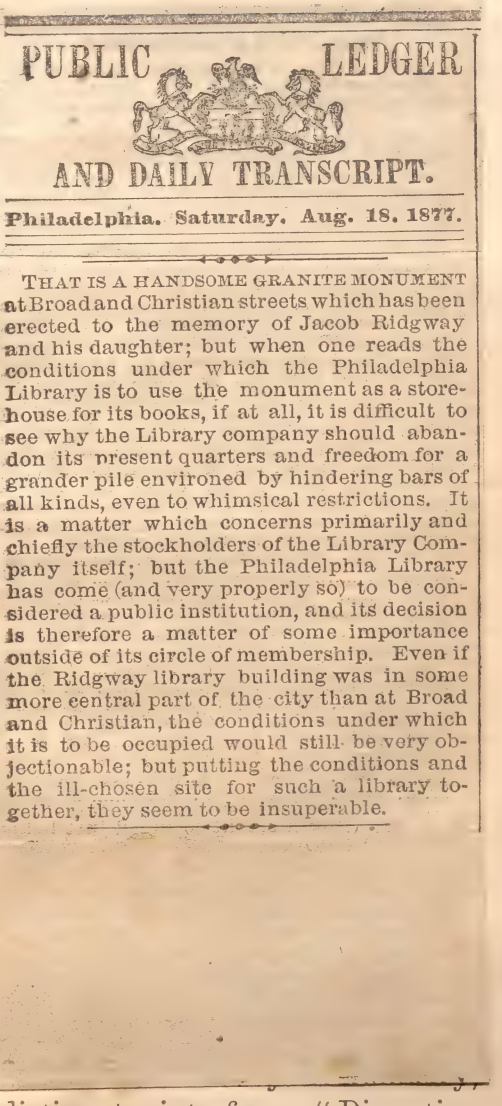

PUBLIC LEDGER
AND DAILY TRANSCRIPT.

Philadelphia. Saturday. Aug. 18. 1877.

THAT IS A HANDSOME GRANITE MONUMENT at Broad and Christian streets which has been erected to the memory of Jacob Ridgway and his daughter; but when one reads the conditions under which the Philadelphia Library is to use the monument as a store-house for its books, if at all, it is difficult to see why the Library company should abandon its present quarters and freedom for a grander pile environed by hindering bars of all kinds, even to whimsical restrictions. It is a matter which concerns primarily and chiefly the stockholders of the Library Company itself; but the Philadelphia Library has come (and very properly so) to be considered a public institution, and its decision is therefore a matter of some importance outside of its circle of membership. Even if the Ridgway library building was in some more central part of the city than at Broad and Christian, the conditions under which it is to be occupied would still be very objectionable; but putting the conditions and the ill-chosen site for such a library together, they seem to be insuperable.

the court had no jurisdiction to interfere. "Discretion
"must be exercised with an absence of indirect motives,

A MIDNIGHT FIRE AT ALDINE HOTEL.

Guests Rudely Awakened from Their Sleep, but All Escape Safely.

DAMAGE ABOUT $130,000.

The Flames Start in the Bakery and Leap Up Through an Old Flue to the Roof.

AN INVALID CARRIED OUT.

Electric Light Wires Burned Off and the House in Darkness—Occupants Grope Their Way Out by the Light of Matches.

Fire that was hungry and swift in its movement shot from the basement of the Aldine Hotel at 1918 Chestnut Street to its ornate roof, five stories from the ground, at 11.30 o'clock last night, and made a persistent attempt to sacrifice the handsome brick structure.

Over 100 guests, all of whom had retired and were getting their beauty sleep, were aroused by bell-boys who ran from floor to floor like mercuries who knew no fatigue, and every available means of escape, including five fire escapes, was crowded with excited men, women and children, scantily clad. No one was injured; everybody reached the street in safety.

GROPING WITH TAPERS.

Immediately after the first cry of fire rang through the corridors all of the electwatchmen in summoning the guests and as a result we got everybody out of the house without an accident. I have personally visited every room in the house and know that every one is out.

"As to the origin of the fire, it is my impression that it started from the bake oven and was communicated to an old flue that ran from the cellar to the roof, southwest of the elevator. This flue was originally constructed for a dumb waiter, but had not been used for some time. Just as soon as this flue caught fire the flames reached the roof in no time and the top of the house was on fire. My room was right on the line of this flue and that accounts for my detecting the fire so quickly."

EX-PRESIDENT M'LEOD IN THE FIRE.

Ex-President McLeod, of the Reading Railroad and his family, occupied their old rooms on the second floor, and as the fire did not get near the rooms they remained until arrangements had been made for them at the house of Mr. Odenheimer, Mr. McLeod's secretary, on Nineentth Street.

Miss Adelaide Detchon occupied rooms adjoining Mr. Mitchell's suite. She was aroused by the noise made by the bell boy at her door. She said: "I think it was 11.45 o'clock when I was aroused and heard the cry of fire. I rushed to the door in my sleeping gown and slippers, and grabbing a wrap made my way to the stairs. I tried to turn my light on, but it burned only a second and then all was darkness. The elevator boy, Barney Tierney, met me in the hall and struck matches until his supply was exhausted, and then we were at the mercy of the poor folks who were trying to escape from the building. I was pushed down the stairs by the crowd behind, and if I had not had the arm of the boy I would have been thrown all the way down. As it is, I am severely bruised and hurt. My medals and decorations and costumes are all wet, but I am glad to have escaped with my life." Miss Detchon went to her sister's home on Chestnut Street early this morning.

Delia McLoughlin, one of the house girls, had a narrow escape from death. She has been ill for some time and last night was given a sleeping potion. When the cry of fire aroused the sleeping guests the other girls ran to Delia's room to get her out, but they had to work for ten minutes to awaken her. She was carried across the street.

SICK GUESTS TAKEN OUT.

Mrs. Baugh and her two children and servant occupied a suite of rooms on the fourth floor. She has been very ill and she was rescued with a great deal of trouble and removed to a neighbor's house, as was Mrs. Thomas, who was also ill.

second page, over. Barney see over.

708 Walnut St
14th July 1877.

My dear Sir,

I entirely approve of the Afc as prepared by Mr Farmer and there is no reason why it should not be at once filed —

I will be in Newport until Tuesday morning —

Very Truly Yours

Wm G. Nelson

Wm J. Williams Esq

ric lights went out leaving the entire house in darkness. Hall boys, clerks and watchmen with lanterns or wax tapers were dashing from room to room arousing the guests. As the guests sprang from their beds and tried to turn on the light in their rooms they found that the electric plant was not working.

Many of them did not stop to search through the darkness for their clothing, but grabbing whatever first came to hand wrapped themselves in it, and groped their way through the dark corridors and down the stairways to the ground floor. There was great confusion on many of the floors on account of the darkness and the cries of frightened women could be heard in all parts of the house.

The damage to the building at 1 o'clock this morning was roughly estimated to be $130,000, partly insured. At that hour, the firemen had the blaze nearly under control and had succeeded in keeping the burned portion within a surprisingly small area. All the books and accounts of the hotel were removed to a place of safety, and were at no time in danger of destruction.

WHERE THE BLAZE STARTED.

The blaze started in the bakery, on the east side of the building; how, nobody could tell. Then it spread into a score of flaming ducts along the ground floor to an old flue in the northeast corner of the building. There seemed to be scarcely a breath of air stirring, so quiet was the night, but this opening was drawing a huge breath to the vent in the roof and there the fire followed, slowly at first, like luminous bands of ribbon being unwound along the sides. Yet no one's slumbers were so far disturbed. It was not long before the fourth story was scorched and the volume of fire and smoke made the atmosphere of the hall heavy with a suffocating odor. Day Clerk W. E. Coile was dozing lightly on the fifth floor. He was the first occupant of the building to learn of imminent danger. It took him but a moment to realize what the trouble was, and he shouted the alarm through the corridors as he ran like a white-robed ghost. When the office was reached on the first floor the private alarm was sounded. On Mr. Coile's heels came Frank Toland, also a clerk, and he bunched the hotel register and other valuable books in his arms and made his exit through the window which led to Chestnut Street. Without waiting for orders he found trusted parties to whom he gave these effects.

ESCAPES IN SCANTY ATTIRE.

The bell boys—B. Tirney, Walter Hastings and Edward Walsh—never responded to a call "Front!" as quickly as they trotted from room to room and pounded with both hands on locked doors. Their words of warning were few but sharp. The guests did not make elaborate toilets. Night gowns, flowing hair and bare feet; skirts on wrong-side out; mackintoshes. Spring

Barney Tierney, the elevator boy, said that he was on the fourth floor when he smelt smoke and securing a fire extinguisher went to the first floor. He could not subdue the fire and he aroused the other employees and helped many of the guests to escape.

The watchmen and bell-boys had all they could do to get the guests out. Many of them wanted to carry bric-a-brac and clothing, but the men would not stand on ceremony and hurried them out. Many of the hotel employees, especially the women, lost their clothing and some wore night dresses only and had to borrow clothing to cover them of the men and others who were fortunate enough to have spare clothing.

Colonel Joseph F. Tobias said the darkness in the hotel corridors made the situation more horrible and it was with the greatest difficulty that he reached the ground floor.

Proprietor Mitchell said the darkness was occasioned by the main service wires from the electric plant being burned. These wires, he said, adjoined the flue through which the flames passed to the roof. He also said that as soon as he discovered that all the electric lights were out he promptly ordered his employees to go through the house and light the gas.

The Aldine's neighbors did all they could for the half-clothed guests who were turned out in the street at midnight. When they rushed to the street the friendly doors of nearly all the houses were thrown open and parlors and libraries were turned into temporary sleeping quarters after blankets and pillows had been placed on the floors. Many of the guests who had not sufficient clothing to make them presentable were supplied by the neighbors.

DAMAGES AS ESTIMATED.

Asked as to his loss Mr. Mitchell said that he valued the furniture in the hotel at $112,000, and that he thought his loss would be about $90,000. He said his insurance amounted to $60,000 and was placed by Etting Bros. The hotel property is part of the J. B. Lippincott estate and is owned by the Pennsylvania Company for the Insurance of Lives and the Granting of Annuities. The value of the property, Mr. Mitchell said, was $350,000 and the loss would probably be about $50,000, making the total loss from the fire $140,000. The loss on the property is fully covered by insurance.

Mr. Mitchell seemed to be particularly gratified that all of his people had got out of the house without injury. He said that he would probably begin in the morning to straighten out his affairs.

Tapping his cash-box he said: "I thank God, that I am in a position to pay every dollar of my indebteness to-morrow morning. The fire has upset me completely. I had planned to build an addition to the hotel and expected to add 100 new rooms this Summer."

Mr. Mitchell's room was utterly ruined, and he lost all of his clothes and personal

see next page.

wraps

see next page.

effects

wraps and overcoats—anything else that could be grabbed from closets or chairs, were what enveloped scores of badly-frightened people as they huddled together in the lower halls and parlors. The fire-escapes were sought by those who were somewhat collected. Many left the burning building by the way of Sansom Street, and neighboring houses, both there and on Chestnut Street were thrown open by kindly disposed householders who made the unfortunates as comfortable as possible.

After it was thought that all the guests had left the hotel, it was remembered that James Barton, who was ill from intermittent fever, was in room 72, unable to move. In a minute a quartette of men went to that apartment and assisted the sick man down stairs.

In the parlor on the ground floor there was much anxiety on the part of women who had abandoned all their finery and jewels. They formed a strange picture sitting in candlelight with expressions of keen misery at prospective losses. Half a dozen policemen were appealed to with requests to brave the flames and even big rewards. It was not necessary, for, in most cases, the fire was kept back from the sleeping rooms. Some suffered, of course, but sharp work gave the flames only a moderate meal. Adelaide Ditchon, in a curious costume, formed of a pink shirt waist and a black underskirt, and with hair rolling over her shoulders, was almost in hysterics. She was one of those whose valuables were in danger, and she appealed for aid, with others.

One music-loving woman held a guitar in her hand, which hardly could have been her most valuable possession, but she had snatched it up in her flight. No one was in a humor for music, however.

MR. MITCHELL'S VERSION.

S. Murray Mitchell, the proprietor of the hotel, was found shortly before 1 o'clock sitting on a soap box in the corridor just outside the cafe. He had his cash-box in his lap and was wiping the prespiration from his brow.

"I was just about retiring," said he, "when the fire broke out. My room was the top floor and as I came out of my bath room I discovered a distinct odor of smoke. I said to my wife that there must be a fire in the house and hardly uttered the words when there was a rap on the door and upon opening it my watchman told me there was a fire in the cellar. I immediately ordered the fire gong to be sounded, and pulling on my clothes I started out to arouse the guests and my servants.

"The servants were all on the top floor and they were among the first to get out. They immediately joined the bell-boys and effects.

Mr. and Mrs. Carey Baird were among those who had to hurry from their rooms. Mr. Baird had on only his dressing-gown over his night shirt when he was seen in the waiting-room. He said that when he heard the cry of fire he did not stop to hunt for his clothes. He picked up his gown and he and Mrs. Baird groped their way through the dark corridors to the back stairway. "I really do not know much about the fire," said Mr. Baird. "I only know that we had to make a quick exit from our rooms."

During the excitement Policeman H. H. Miller saw a young man acting in a suspicious manner on the fourth floor of the hotel and placed him under arrest pending an investigation.

An official list of the guests could not be obtained last night, as the books were carried to a place of safety as soon as the alarm was sounded. Some of the names of the guests were secured from the chambermaids. They are: Charles Campbell and wife, John Smiley, David Yates, Mrs. Baugh and two children, Mrs. William Thomas, James Benton, William Thomas, wife and four daughters, Miss Emily Haines, Mrs. Williams and two daughters, Pittsburg; Colonel Joseph F. Tobias, James E. Matthews, Senator Chase, of Rhode Island; William Lee Roberts, Jacob Naylor and daughter, Misses Hattie and Annie King, B. F. De Weiss and wife. Mr. Henry Carey Baird and wife, Mrs. Fiske, Mr. and Mrs. Crayon, John Donaldson, wife and daughter, Miss Adelaide Detchon, W. B. Smith, of New York; Mr. and Mrs. Theodore Wernwag, Mrs. Brinton, Mrs. Hardy and Mr. Gill.

The main part of the hotel was in old days the residence of Mrs. Rush, who acquired so great a vogue as a leader of fashion in this city. The house was the scene of her numerous entertainments that were conducted on a plan that was regarded in her time as so broad and splendid as to make her a very conspicuous figure.

Just preceding the Centennial year the house was enlarged and fitted for a hotel, under the proprietorship of A. P. Ashmead. About three years later it passed into the management of S. Murray Mitchell, who was a clerk at the St. Cloud Hotel, and it has remained under his control ever since.

Sid C. France's Illness.

FORT WAYNE, Ind., May 14.—Sid C. France, the veteran actor, has been in a critical condition for several days, but is much improved. The report that he has consumption is denied by his physicians. They say he will attend rehearsal Monday.

see ante over watchmen
May 15th a.D 1893.

See page 49. ante

THE PHILADELPHIA INQUIRER,

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The Philadelphia Inquirer

WEDNESDAY, OCTOBER 3, 1877.

THE NEWS OF THE MORNING.

At Home.

The Rush Estate.

The account of Henry J. Williams, Esq., executor of the estate of the late Dr. James Rush, will shortly be presented in the Orphans' Court for examination. This account embraces the receipts and disbursements from June 1, 1869, to July 1, 1877. The accountant charges himself on the debit side with items of cash, bonds, real estate, &c., to the total value of $1,115,639 97. On July 1, 1877, there remained in the hands of the executor real estate and personal property unsold to the value of $402,632·35. The account is very voluminous, covering, item by item, all the outlays on the now completed Rush Library.

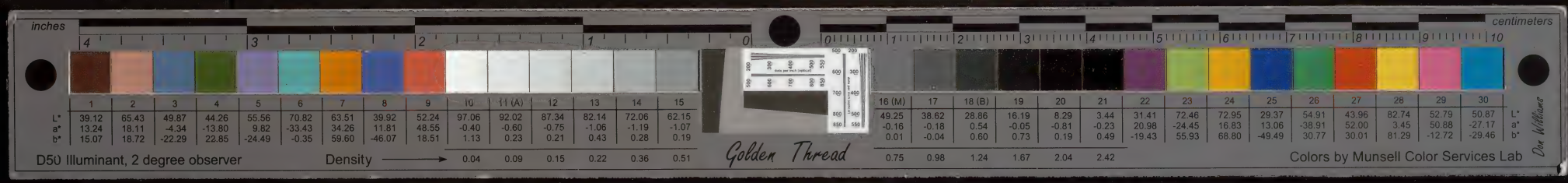
708 Walnut St
4 Oct 1877 -

Dear Sir -

The Court have fixed Tuesday 9th inst for auditing Mr Williams account as Executor of Dr Rush - Will you please attend with your vouchers - &c.

Yours truly
John E Johnson
pr A Wilson

Mr Farmer -


inches
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a* 13.24 18.11 -4.34 -13.80 9.82 -33.43 34.26 11.81 48.55 -0.40 -0.60 -0.75 -1.06 -1.19 -1.07
b* 15.07 18.72 -22.29 22.85 -24.49 -0.35 59.60 -46.07 18.51 1.13 0.23 0.21 0.43 0.28 0.19
16 (M) 17 18 (B) 19 20 21 22 23 24 25 26 27 28 29 30
L* 49.25 38.62 28.86 16.19 8.29 3.44 31.41 72.46 72.95 29.37 54.91 43.96 82.74 52.79 50.87
a* -0.16 -0.18 0.54 -0.05 -0.81 -0.23 20.98 -24.45 16.83 13.06 -38.91 52.00 3.45 50.88 -27.17
b* 0.01 -0.04 0.60 0.73 0.19 0.49 -19.43 55.93 68.80 -49.49 30.77 30.01 81.29 -12.72 -29.46
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Golden Thread
Colors by Munsell Color Services Lab
Don Williams

promise was given. The bill charged (5 Ch. Ap. 45), "After the execution of the deed the late Duke communicated to his children his intention that in the event of the plaintiff marrying Sir Wm. Topham the said income and annuity should be appointed, by the Duke of Portland for the time being, in such way as that one moiety should be received by Lady Harriet for her own benefit, and that the other moiety should be dealt with for the benefit of the plaintiff according to circumstances. The late Duke's children acceded to the wish so expressed, and agreed with him to carry into effect his intentions in reference thereto." It was also charged that the last appointment "was not made for the benefit of Lady Harriet, but for the purpose of carrying into effect an agreement that she had made with the donee, not to use more than one moiety, but to accumulate the other, in pursuance of which said appointments had been made, and that the donee executed the deeds, well knowing that Lady Harriet would act in conformity with such agreement."

After the late Duke's death, a marriage took place between Lady Mary and Col. Topham. The donee of the power then attempted to execute it, and appointed the whole fund nominally in favor of Lady Harriet, but only after he had communicated his father's wishes and subject to an arrangement that she should only use one moiety, and should reserve the other for her sister's benefit under certain contingencies. This moiety of the fund was carried to a separate account on the banker's books under the head "S," meaning sister, under a cotemporaneous order given by Lady Harriet, who was well aware that she was not to use it, and assented to the arrangement.

The power was really exercised only as to one moiety of the fund. In the House of Lords it was so held, but they introduced into their order the words "without prejudice to any question as to any future exercise of the power of appointment." The Duke, after all the litigation through three Chancery Courts, determined to try a new experiment

Octr 9th /77.

Henry J. Williams Esq:

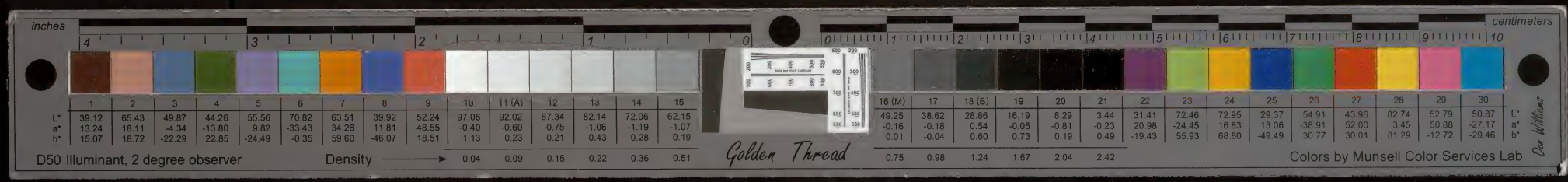
Dear Sir "Chestnut Hill"

This morning being fixed by the Court for Auditing your Acct: as Executor of Dr. James Rush. I attended with the vouchers necessary for verifying your Acct: The vouchers being produced & shown to the Court and no one appearing to make any claim against the Estate, and no objection being made ~~against~~ to your Acct as filed. The Court ordered it to be duly confirmed —

Respy Yours &c:

James S. Farmer

No 712 Walnut St.



	1	2	3	4	5	6	7	8	9	10	11 (A)	12	13	14	15
L*	39.12	65.43	49.87	44.26	55.56	70.82	63.51	39.92	52.24	97.06	92.02	87.34	82.14	72.06	62.15
a*	13.24	18.11	-4.34	-13.80	9.82	-33.43	34.26	11.81	48.55	-0.40	-0.60	-0.75	-1.06	-1.19	-1.07
b*	15.07	18.72	-22.29	22.85	-24.49	-0.35	59.60	-46.07	18.51	1.13	0.23	0.21	0.43	0.28	0.19
Density										0.04	0.09	0.15	0.22	0.36	0.51

	16 (M)	17	18 (B)	19	20	21	22	23	24	25	26	27	28	29	30
L*	49.25	38.62	28.86	16.19	8.29	3.44	31.41	72.46	72.95	29.37	54.91	43.96	82.74	52.79	50.87
a*	-0.16	-0.18	0.54	-0.05	-0.81	-0.23	20.98	-24.45	16.83	13.06	-38.91	52.00	3.45	50.88	-27.17
b*	0.01	-0.04	0.60	0.73	0.19	0.49	-19.43	55.93	68.80	-49.49	30.77	30.01	81.29	-12.72	-29.46
Density	0.75	0.98	1.24	1.67	2.04	2.42									

"cially, the whole of what one of the four deeds purported to "appoint in her favor beneficially, and that *the main and govern-* "*ing view which he had in executing them was to enable the in-* "*come at least, of part of the property, to be appointed, em-* "*ployed, or withheld in a manner not warranted by either of* "*these powers.*" L. J. Bruce in same volume.

"It has been pressed upon me, more especially by the counsel "for the Duke, that I cannot decide in favor of the plaintiff "without holding, either, first, that the appointments already "made in favor of Lady Harriet, being tainted with illegality "by reason of the circumstances under which, and the purposes "for which they were made, it was impossible for the Duke to "make fresh appointments in her favor free from the same taint "of illegality; or, secondly, that I must discredit the state- "ments made by the Duke's answer and affidavit.

"I do not find myself under any obligation to accept either "alternative. As to the first, *without saying that it is impossi-* "*ble to set what was wrong right, and to make any subsequent* "*appointment free from the taint, I hold that it was necessary,* "*in order to set it right, that something should have been done* "*and said, clearly, unambiguously, and sufficiently, to discon-* "*nect the new appointment from the old understanding—from* "*the old purpose—from the old influences—which rendered the* "*old appointment illegal and void; and that merely executing* "*a new deed, and sending a dry, formal, official lawyer's letter* "*to the appointee, informing her of the new appointment, and* "*of the legal effect of the instrument, were not sufficient for* "*the purpose.*

"And, on the second point, I hold that every man must be "presumed to intend and mean that which is the natural and "necessary effect of his acts.

"Now, when the new deeds of appointment were made, things "stood thus:—

"The Duke had said in his answer in the former suit, this: "When the said deeds poll of the 19th of December, 1854, "were executed by me, I fully intended that from and after the "execution thereof the defendant, Lady Harriet Cavendish "Bentinck, should receive the whole of the dividends or in- "come and annuity thereby appointed to her: and I was aware "when and before such appointments were made that the said "defendant, Lady Harriet Cavendish Bentinck, would have, "and I intended that she should have the power, if she thought "fit to exercise it, of dealing with, and disposing of, the whole "of the dividends, yearly income, and annuity, as her own "moneys. But the said appointments were made in conse- "quence of the marriage of the plaintiff, and as the only mode "by which, as I was informed, the immediate and absolute "vesting in the plaintiff of a share of the dividends or income

Re Est James Rush.

708 Walnut St
Nov 5/77 -

Dear Sir -

Will you please send check by Mr A J Forten Clerk of O.C. in payment of costs as per certified copy of adjudication herein enclosed -

Yours truly
John G Johnson
for A Wilson

Mr Farmer

THE RIDGWAY LIBRARY.

A CLAIMANT FOR A LARGE ESTATE—THE GENEALOGY OF THE RUSH FAMILY.

Robert Manners, a nephew of the late Dr. James Rush, and a resident of London, has filed a bill in equity in this city setting forth that, as Dr. Rush died without issue, and, not leaving a widow, father or mother behind him, therefore, he is the heir-at-law, and entitled to his proper share of all the estate and property of Dr. Rush. The last will and codicil of Dr. Rush are declared as so uncertain as to be incapable of any clear meaning, while it is set forth that their execution would be contrary to sound morals and to religion, and would be opposed to the policy of the law; that the Philadelphia Library Company have declined to accept, under the conditions of the will and codicils, and have no power to accept the devise, and, if it were otherwise, are incompetent in law to act as trustees; that the provision for the foundation of the Ridgway Library in the contingency of a refusal of the library company to accept the devise cannot be carried out, because it required the entire estate to be expended for a lot and building, and left no funds whatever for the foundation of a library; that this provision is incapable because no one save Henry J Williams, Esq, is authorized to execute it, no provision being made for its execution after his death; and that under the will works must be admitted to the library which inculcate rebellion, treason, atheism, deism, materialism, or which uphold polygamy and socialism, and the library would become a fountain for the corruption of pure religion, sound morals and good order. It is, therefore, claimed that the lot and building and the residue of the estate have become the property of Robert Manners and other heirs at law, and a perpetual injunction is asked to restrain Henry J. Williams, Esq, from using any of the real or personal estate in the foundation of a library.

Mr. Williams stated yesterday, when questioned in regard to this claim, that he was not at all alarmed about it, and that at best it could only delay the operation of the will for two or three years

The following summary of the genealogy of the Rush family shows the ancestry of the claimant under this equity suit back to the year 1628:

John Rush commanded a troop of horse in Cromwell's army. At the close of the civil war he married Susannah Lucas, at Horton, in Oxfordshire, on the 8th of June, 1648 He embraced the principles of the Quakers in 1660, and came to Pennsylvania in 1683, with seven children, and settled in Byberry, now the Twenty third Ward of Philadelphia. In 1691 he and his whole family became Keithians, and in 1697 most of them joined the Baptist Church. He died at Byberry in 1699.

William Rush, the second child of John and Susannah, was born July 21, 1652, and married in England Amelia ———. He died at Byberry in 1688 They had three children, of whom the second, James Rush, married Rachel Peart. James Rush died in 1727, at a farm on Poquessing creek. They had nine children, of whom the eldest, John, married Susan Harvey, a widow and daughter of Joseph Hall. John and Susan Rush had seven children, the fourth of whom, Dr. Benjamin Rush, a signer of the Declaration of Independence, was born December 24, 1745, and died April 19, 1813. He married Julia, daughter of Richard Stockton, of New Jersey. Benjamin and Julia Rush had ten children, of whom John died single. Emilia married a Canadian gentleman named Cuthbert. Richard married Catharine Eliza Murray; Susannah, Elizabeth, Mary, the mother of the present contestant of the will of James Rush. James married Phoebe Ann Ridgway. William, Benjamin, who died young, and Benjamin still living.

It is understood that if the decision of the Supreme Court in the case now pending is adverse to the library company and that they are compelled to pay taxes on their real estate that they will not accept the trust under the will of Dr. Rush. The only claim for taxes which the library company has been called on to resist is on the real estate at Fifth and Library streets, that is the library building itself.

Philad: Inquirer.
Feby 20th AD 1878.

ESDAY, MARCH 5, 1878.

GLEANINGS IN THE COURTS.

CIVIL AND CRIMINAL.

Judgments in the Supreme Court—The Philadelphia Library Not Taxable Records of the Common Pleas—The McGonigal Homicide.

THE PHILADELPHIA LIBRARY NOT TAXABLE.

Donohugh's appeal in the case of the Library Company of Philadelphia vs. Donohugh, collector of delinquent taxes. Yesterday morning the court, in a per curiam opinion, affirmed the decision of the Court of Common Pleas, No. 2, restraining Donohugh from collecting taxes from the library company on the ground that the company was a public charity, and for that reason exempt. The court say: The exemption desired in this case falls clearly within that clause of the act of May 14, 1874, P. L. 158, which exempts from taxation all "associations and institutions of learning, benevolence or charity, with the grounds thereto annexed and necessary for the occupancy and enjoyment of the same, founded, endowed and maintained by public or private charity." This leaves the true question upon that clause of the fifteenth section of the ninth articles of the new Constitution which authorizes the General Assembly to exempt institutions of purely public charity.

On this the proof of the case the opinion of the learned judge of the Common Pleas is so full, clear and accurate we deem it unnecessary to add anything to what he has said so well. One point, perhaps, we should notice. The word "purely" must be interpreted so as to confine its qualification of a public charity to those institutions solely controlled and administered by the State herself, or so as to extend it to private institutions for purposes of purely public charity and not administered for private gain. We prefer the latter interpretation as declaring the true meaning of the Constitution, and subserving best the public interests. On this point, in its application to the Library Company, the opinion of the learned judge fully sustains the claim of the company to be an institution of this character.

A NEW CLAIMANT.

DR. RUSH'S NEPHEW FILES HIS BILL

While Mr. Williams, the Library Company and the Tax Collector are Disputing Over the Bequest, the Heir-at-Law Puts in a Word for Himself and Disputes the Will.

A new complication has arisen in the matter of the estate of Dr. James Rush, in compliance with the directions of whose will a magnificent granite building, which has been called a splendid monument to folly, has been erected on South Broad street. One Robert Manners, a resident of London, England, who claims to be the nephew of Dr. Rush, now comes forward and proposes to relieve the Philadelphia Library Company of all doubts about the acceptance of the building under the burden of the eccentric provisions of the will by accepting it himself, together with all the residue of the estate. To this end he has filed a bill in equity by his attorneys, Francis E. Brewster, F. Carroll Brewster and William A. Porter, wherein he sets forth that he is the son of Mary Rush Manners, who was a sister of Dr. James Rush, and that, as the latter died without issue, and not leaving a widow, father or mother to survive him, therefore he is Dr. Rush's heir-at-law and entitled to his proper share of all the estate and property of Dr. Rush. The bill sets forth, in legal verbiage, that the last will and codicils of Dr. Rush are so uncertain as to be incapable of any clear meaning; are full of contradictory and repugnant clauses, and are impossible of execution, and, if possible of being carried out, their execution would be contrary to sound morals and to religion, and would be opposed to the policy of the law; that the library company have not accepted, have declined to accept under the conditions of the will and codicils, and have no power to accept the devise, and, if it were otherwise, are incompetent in law to act as trustees under the will and codicils; that the provision for the foundation of the Ridgway Library in the contingency of a refusal by the library company to accept the devise cannot be carried out, because it required the entire estate to be expended for a lot and building and left no funds whatever for the foundation of a library; that this provision is further wholly incapable because no one save Henry J. Williams, Esq., is authorized to execute it, no provision being made for its execution after his death; that under the will works must be admitted to the library which inculcate rebellion, treason, atheism, deism, materialism or which uphold polygamy and socialism, and the library would become a fountain for the corruption of pure religion, sound morals and good order. For these and other reasons which are set forth at length it is claimed that the lot and library building and the residue of the estate have become the property of Robert Manners and other heirs-at-law, and a perpetual injunction is asked to restrain Henry J. Williams, Esq., from selling any of the real estate and ground rents or using the same or the personal estate of Dr. Rush in the foundation of a library.

(Copy.)

Private 172 S. Chestnut St
9 June 1877.

My Dear Uncle

Though I was urged while abroad, by letters from friends at home, in which I do not refer to my family, to contest the will of Dr James Rush you will remember I am sure how promptly I abandoned all thought of doing so I have adhered to my resolution.

Some questions of Law will yet arise upon the provisions of the Will To meet these two of the heirs have employed Counsel who will file a bill in Equity at the proper time. I am advised by them that this is not the time to do so But I cannot leave the country without this line to say, that I trust no proceeding to which I shall be a party instituted for the settlement of questions

questions of law to the supremacy & controlling operation of which your long and useful life has been so conspicuously devoted will be misunderstood by you or in any way construed as a departure from the sentiments of high respect and great regard with which

I remain
very sincerely yours
Benjamin Rush

I had very much hoped to go to Chestnut Hill to bid you good bye. but have found myself utterly unable to do so to my great regret We leave Phila on Tues: the 12th to embark from New York the next day. I shall leave this letter to be forwarded to you when in the judgment of my counsel the proper moment has arrived.

asked to restrain Henry J. Williams, Esq., from selling any of the real estate and ground rents or using the same or the personal estate of Dr. Rush in the foundation of a library.

(Copy).

623. Walnut St:
Feby. 21st 1878.

My Dear Sir

In accordance with a request made by the late × Benjamin Rush. Esq: on the eve of his last depart-ure for England. I send you the enclosed letter.

with the highest respect
Yours very truly
Wm A. Porter

Henry T. Williams Esq:

× Benj: Rush died suddenly while in an omnibus in London, Eng: July 4th AD 1877.

Mrs Eliz: M. Rush died Feby 28/81st Nice.
she was a daughter of Dr Wm Simpson of Pittsburgh Penna

THE RUSH WILL CONTEST may be "all bosh," as Mr. Librarian Smith has averred, but it is none the less a provoking incident in the settlement of the noble bequest of Dr. Rush. Even if Major Manners does not succeed in breaking the will he can delay the settlement of the estate, and the relations of the bequest to the Philadelphia Library are so peculiar that any such entanglement as is now intimated would be most unfortunate. If precedents in such matters go for anything the only considerable result of this contest if it should be actively undertaken would be the enriching of various cultivated lawyers. The case may be all bosh as far as relates to Major Manners' chances of making money out of it, but the legal gentlemen concerned will not tell us it is bosh;—quite the contrary; the lawyers make, whoever loses, and if the contest is carried on for any time the result could only be to materially diminish a bequest from which so much substantial public benefit is now expected. And the incident has an even wider application. There will be time to discuss the rights of this contest when it comes fairly to an issue, but whether it is urged or not there is no doubt but the practice of breaking wills for trivial or far-fetched causes is a mischievous one that is calculated to break down the proper barriers to wealth. The right of a man to do as he sees fit with his own, as long as he does not deprive his immediate family of the dues accorded them by law, is so manifest that any contrary insistence is an bause of one of the most important of social safeguards. Abstractly, this is everywhere admitted, yet it is a comparatively rare case where a rich man dying without immediate family, and having willed his money to public or charitable uses, that on one pretext or another the will is not broken, or the money dissipated in an attempt to break it. It is a shameless abuse of law which makes such a thing possible, but a long record of such events renders it likely that lawyers and others interested in sharing the plunder often incite distant relatives, who have no reasonable or lawful claims to, make such attempts. Our law-makers can have no more important subject presented them, and it seems to be an essential that greater safeguards should be thrown around this class of cases. As the matter stands, the making of money is but half the struggle. A man strives for a purpose; he expects to do a certain thing with his wealth, and he has every right to do it if thereby he breaks no law, but in the present state of society the chances are at least even that, unless he leaves wife or children, his wishes in the distribution of the wealth he has accumulated will go for nothing. It would be difficult to define a greater wrong than this. Feb: 20.78.

Yesterday afternoon in Common Pleas Court No. 1 the suit of Robert Manners, of London, England, against Henry J. Williams and the Library Company of Philadelphia came up for argument on demurrer of the defendants to the plaintiff's bill in equity. The averments in the bill have already been given to the public, and will only be referred to here in connection with the argument. The causes for the demurrer are as follows:

First, that Manners was not sole heir-at-law of James Rush and had not made the other heirs parties to the bill; second, that by act of April, 1855, the complainant, as an heir-at-law, has no interest in the estate on the grounds stated in the bill; third, if the provisions of the will were invalid any proceedings by reason thereof should be instituted by leave of the Attorney General; fourth, the allegation of want of funds to maintain the library is untrue, for the testator expressly dedicates a fund for such a purpose sufficient to secure an annual sum of $10,640; fifth, the clauses of the will alleged to be contrary to morality are simply directory and do not compel the purchase or preservation of any book whatever, and it cannot be assumed that it was the testator's intention to preserve illegal publications; sixth, if certain parts of the scheme for a library are impracticable or illegal this will not defeat the scheme as a whole; seventh, if the testator purchased the lot of ground at Broad and Christian streets within a calendar month prior to his death this purchase was not such a conveyance in trust for charitable uses as is void by reason of the statute in that behalf provided; eighth, if the objects for which the purchase was made are void, the property would become part of the residuary estate to the exclusion of the complainant; ninth, the additional directions contained in the last codicil as to the management of the library after acceptance did not revoke the prior provisions of the will as to the disposition thereof in case of non-acceptance; tenth, the testator having by will devised his whole estate in trust for the uses of a library any subsequent direction to expend any part thereof in the purchase and improvement of a lot for the same did not operate as a revocation of the previous gift; eleventh, if no disposition were made of the residuary estate not thus expended nor required for the payment of annuities, yet any such surplus is not vested in the complainant, but remains as a gift to charitable uses to be applied under the statute; twelfth, it is not alleged in the bill that the time has yet arrived for this defendant to elect to accept or refuse the trusts in the said bill contained, and the averments therein as to refusal, incapacity or failure of the defendant so to accept are too uncertain and inconsistent to require answer; thirteenth, it appears by the complainant's own showing that the person is still living whose discretion is alleged to be necessary to execute the trusts contained in said will; fourteenth, the trusts defined by the bill are sufficiently certain to be carried into effect after the selection of the lot referred to, without requiring the personal direction of the executor, the defendant herein, and in case of the death of the latter certain other persons are nominated by the testator to be executors in his stead; fifteenth, the complainant is debarred by his laches from controverting the provisions of the will, and, by reason of lapse of time, no alleged invalidity of the codicils can now avoid the will; sixteenth, the complainant, while seeking equity, has not offered to do equity, in that he has not offered to repay the executor any moneys that may have been expended on the lot of ground now claimed by the complainant.

Mr. McMurtrie commenced his argument in support of these points, and will continue it this morning.

A SEARCH FOR A TITLE.

708 Walnut St
12 April 1878.

Dear Sir,

Mr Robbs address is West side 4th St, above Prune.

He is the Master in Chancery to whom has been referred the bill we have filed against the Liberty Cap. It is in his capacity as such Master, he requires the information to asks for.

Yours Ever
Joh G. Johnson

Mr J. S. Farmer.

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pended on the lot of ground now claimed by the complainant.

Mr. McMurtrie commenced his argument in support of these points, and will continue it this morning.

A SEARCH FOR A TITLE.

May 6th A.D. 1878. Mr Williams executed Deed to Philad^a Liby Coy^e. transferring all the Real Estate and securities belonging to Dr Rush's Estate —

J.S.F.

The said Deed was Recorded May 7th/78 in D.B. D.H. L.No. 172 page 121 &c:

J.S.F.

The Philadelphia Inquirer

FRIDAY, MARCH 29, 1878.

THE RUSH BEQUEST.

The argument in the case of Manners against Henry J. Williams and the Library Company of Philadelphia were resumed yesterday morning in Common Pleas Court No. 1.

George Junkin, Esq., for the respondents, was the first speaker. He briefly reviewed the ground gone over by the preceding speakers, and then proceeded to reply to Judge Porter's principal argument, that the devise must fall because the conditions it imposed on the devisee were contrary to religion and good morals. Referring to the extract from Dr. Rush's publications, read by Judge Porter to show that he denied the existence of a God, Mr. Junkin stated that the words would not bear that interpretation, and that in two other places in his works Dr. Rush expressly affirmed the existence of a Supreme Being. Further than that, the provision he made for the observance of the Christian Sabbath, and his recognition of the fact that in striking that down our social fabric was in danger of destruction, ought to be a sufficient answer to this charge in the bill.

The clause of the will, furthermore, is not an essential part of the devise, but is merely an incident; it is not a condition; but the language itself shows it to be merely the expression of opinion—"I wish" says the testator. When in the will a condition is expressed far different language is used. The language of the will is that it is his wish that no work shall be excluded on the ground that it differs from the conventional opinions on religion, &c. What are conventional opinions? They are constantly changing.

Judge Peirce remarked that he knew of no greater calamity that could befal a community than the crystallization of generally received opinions.

As to the allegation in the bill that no disposition is made of the estate in case the Philadelphia Library Company shall not accept it, and that, therefore, Dr. Rush died intestate as to certain remainders, he replied that if such were the case the complainant had no standing in this court, and must seek relief in the Orphans' Court.

William Henry Rawle, Esq., closed the argument for the respondents. He argued in support of the demurrer that the plaintiff had no standing in court because he had not joined with him the other heirs-at-law. Suppose the court should grant his prayer, what is to become of the other heirs whom he does not mention in his bill, and who are not before the court?

A large part of his argument was directed to that portion of the bill charging that the will was against public morality, and referred to the arguments used in the contest over Girard's will. Judge Story had said that it was not necessary to consider the effect of a devise for establishing infidelity, for it is not presumed to exist in a Christian country. But it did come into existence, and in a subsequent decision infidelity was trampled down.

But suppose, instead of Dr. Rush saying "I wish" he had said "I prescribe" that no works shall be excluded because they differed from conventional opinions on religion and morality, would it be held that a great library ought to exclude the Talmud, the Book of Mormon, or similar works, because they taught other than conventional doctrines? He would go further, and say that works containing even ribaldry and indecency would not be so excluded; for if the contrary were held Shakspeare, Milton, Plato, and other authors whose works could be found on the tables of every literary man must be taken down from the shelves, and instead of $10,640 being insufficient for the annual maintenance of the library, as averred in the bill, a much smaller sum would be too much.

If the idea of the plaintiff as to what works should be excluded were to be learned from the quotation from Dr. Rush's works, what would be said of "Gibbon's Decline and Fall of the Roman Empire," whose fifteenth chapter was a bitter assault on the Christian religion? Or, would it be claimed that the works of Tyndall and Huxley, which claimed that matter was supreme, were unfit for a library? He read from Macaulay to show what that author regarded as proper to be placed in a public library, that many valuable works throwing light on history and manners could not be excluded on the ground of impurity.

The Philadelphia Inquirer

MONDAY, APRIL 8, 1878.

NEWS OF THE MORNING.

In Common Pleas, No. 1, on Saturday, Judge Allison rendered a verbal opinion in the matter of the bill in equity of Robert Manners vs. Henry Williams and the Library Company of Philadelphia. The matter was argued on the bill and demurrers. The court sustained all the demurrers, of which there were twelve. Judge Allison said he did not think any one of the averments in the bill contained anything which would entitle the matter to come to an issue, and there was nothing which would allow the plaintiff to enter into a contest on the bill and claim the estate upon the ground set up in the bill.

As to the residue of the estate after building a library, the court said that the intent of the testator was clear, and that he did not die intestate as to that residue; that he provided for the keeping of the library for all time, and it was his intent that the residue should be expended for that purpose. Further, that in case the trustee should die, the argument that the purposes of the will would come to naught was defective, because it was clearly such a case that the courts would see that another trustee was appointed to carry out the beneficial intent of the testator.

In regard to the averment that religion and morality would be subverted by carrying out a certain portion of the will, the court expressed the opinion that the ground of the demurrer was well taken. The language of the will says "I wish." But even were it in the nature of a binding instruction to keep these books in the library, "we think it would be asking the court a great deal to say that a large public library, to which the whole public can go for knowledge, should be restricted upon questions of vast importance to books confined to one side of the question."

It was clearly within the discretion of the trustees to decide what books they would have, and so long as they do not allow indecent or ribald books on their shelves they are exercising that discretion in a wise way.

The Philadelphia Inquirer

TUESDAY, MAY 7, 1878.

THE PHILADELPHIA LIBRARY.

ANNUAL MEETING YESTERDAY AFTERNOON—THE REPORT OF THE BOARD OF DIRECTORS—ELECTION.

In the old building at the corner of Fifth and Library streets, yesterday afternoon, was held the annual meeting of the Library Company of Philadelphia. Hon. George Sharswood occupied the chair, and William Henry Rawle, Esq., acted as secretary.

The report of the treasurer for the year just closed was presented, which stated that the total income was $11,540 71, and the expenditures $10,830 84.

The report of the directors was then submitted:

The directors of the Library Company respectfully report that they are able to congratulate the members of the company on the settlement of the difficulties which have been supposed to attend the acceptance of the munificent devise of the late Dr. James Rush—a trust which, if properly administered, cannot fail to be highly advantageous to the public as well as to the members of the library company.

As the company considered it best, by their resolution of the 20th of October, 1869, to accept the gift, the directors have done what was possible to carry out the wishes of the members. An act of Assembly and certain modifications by the proper court of its charter have been obtained, which enable the library company to act as trustees under Dr. Rush's will without affecting its own books and collections, except so far as may be thought just to comply in good faith with the expectations of the testator.

A noble structure, fire-proof in all its parts, and the finest edifice devoted to library purposes in the United States, has been erected by his executor, Henry J. Williams, Esq., who has discharged the onerous duties devolved upon him with conscientious fidelity and efficiency. A suit which was instituted by him to ascertain the rights of the parties interested has just been determined. The decree of the Court of Common Pleas, made on May 4, 1878, establishes that while the company has already accepted the bequest of Dr. Rush, it has done so on terms which substantially preserve the identity of the old institution, and enable it to use for the public good the property thus confided to it without imperilling that which has come to it from other sources. In accordance with that decree a deed of trust, which was carefully examined and unanimously approved and accepted by the board, has been executed by the company, a copy of which is herewith submitted. It will be seen that this deed conveys not only the building in Broad street, but also the residuary estate of the late Dr. James Rush, which constitutes the endowment fund of the Ridgway branch. This endowment consists of real estate valued at $300,000, yielding a gross income of nearly $30,000, and a net income, after paying taxes, repairs and expenses, of over $18,000. It is charged with the payment of annuities amounting to $5680; but it is estimated that even now, after defraying the necessary expenses of the Ridgway branch, a considerable yearly sum will be left for the purchase of books.

Another gratifying fact which the board are able to communicate at the present time, and one which removes the principal objection heretofore felt to the acceptance of Dr. Rush's gift, is that the Supreme Court has recently decided that so much of the company's property that is actually used for library purposes is exempt from taxation.

In the meantime the present library building has become so crowded that there is little or no further shelf room available for the storage of books. Immediate relief from this embarrassment will be afforded by the use of the Ridgway branch, to which the directors propose to remove not only such books as, if destroyed by fire, could never be replaced, but also, with the approval of their co-trustees, the entire Loganian Library, together with that portion of the company's own collection which may be considered more particularly as a library of reference. The business of a circulating library, which was the original and primary object of the association, will still be carried on mainly in the present building, which will be connected by telephone with the one at Broad and Christian streets, the American District Telegraph Company affording facilities for sending books from either to the houses of members and others.

The above mentioned action of the court investing the company with the management of the trust created by Dr. Rush's will, finds the board of directors charged with the administration of another trust that is to say, the building fund started in 1856. This fund, as will be seen by the accompanying report of the treasurer, now amounts to $117,544 44, of which $71,809 18 is invested in real estate at the corner of Locust and Juniper streets. The remainder would be sufficient, at the present reduced cost of building, to put up a fire-proof structure on that or some other convenient lot, sufficient to contain all the books which it is necessary for the company to keep in a central location; and whenever a satisfactory offer is received for the company's property at Fifth and Library streets the question of removal will be seriously entertained.

In a brief address, in which he congratulated the library company upon the termination of its legal difficulties, Hon. Eli K. Price moved for the adoption of the report, which was agreed to. The treasurer's report was also adopted.

The company has now the finest library building in the country. It cost $500,000. The directors, it is understood, will make no change in the business of the circulating department, which will remain at Fifth and Library streets. The work of removing the older and more valuable books to the new building will begin at once. The librarian will then avail himself of the opportunity to introduce, for the first time, a classified catalogue of subjects upon the shelves. It has been proposed, and received with favor by the directors, to make the Ridgway branch of the library a free one, assimilating its rules to those of the Loganian Library, of which the directors are co-trustees. If adopted any person will be permitted to use the books upon making a deposit of double the value of the book taken away.

The following named gentlemen were then chosen directors and treasurer, after which the meeting adjourned:

Directors—Messrs. Charles Willing, David Lewis, J. I. Clark Hare, Peter McCall, Henry Wharton, Henry Cramond, James S. Biddle, Henry C. Lea, John S. Newbold, Casper Wister, Edward S. Buckley, S. Weir Mitchell.

Treasurer—Lloyd P. Smith.

Library Co. of Philada.
Fifth Street, below Chestnut,
Philadelphia July 31 1878

Dear Sir,

Mr Johnson, I understand, left word to have the amounts recd from the sale of ground rents handed over to the Library Co. I beg therefore that you will send me a check when convenient in order that we may pay the bills for shelving &c

Yours truly
Lloyd P. Smith
Treasurer

James S. Farmer Esq

RIDGWAY BRANCH.

At the annual meeting of the Library Company, May 6, 1878, the Hon. George Sharswood was called to the chair, and the Secretary, William Henry Rawle, Esq., read the following Report:—

The Directors of the Library Company respectfully report: That they are able to congratulate the members of the Company on the settlement of the difficulties which have been supposed to attend the acceptance of the munificent devise of the late Dr. James Rush; a trust which, if properly administered, cannot fail to be highly advantageous to the public as well as to the members of the Library Company.

As the Company considered it best, by their resolution of the 20th day of October, 1869, to accept the gift, the Directors have done what was possible to carry out the wishes of the members. An Act of Assembly and certain modifications by the proper Court, of its Charter, have been obtained which enable the Library Company to act as Trustees under Dr. Rush's will without affecting its own books and collections, except so far as may be thought just to comply in good faith with the expectations of the testator.

A noble structure, fire-proof in all its parts, and the finest edifice devoted to library purposes in the United States, has been erected by his Executor, Henry J. Williams, Esq., who has discharged the onerous duties devolved upon him with conscientious fidelity and efficiency. A suit which was instituted by him to ascertain the rights of the parties interested has just been determined. The decree of the Court of Common Pleas, made on the 4th of May, 1878, establishes that, while the Company has already accepted the bequest of Dr. Rush, it has done so on terms which substantially preserve the identity of the old institution, and enable it to use for the public good the property thus confided to it without imperilling that which has come to

it from other sources. In accordance with that decree a deed of trust, which was carefully examined and unanimously approved and accepted by the Board, has been executed to the Company, a copy of which is herewith submitted. It will be seen that this deed conveys not only the building in Broad Street, but also the residuary estate of the late Dr. James Rush, which constitutes the endowment fund of the Ridgway Branch. This endowment consists of real estate valued at $300,000, yielding a gross income of nearly $30,000, and a net income, after paying taxes, repairs, and expenses, of over $18,000. It is charged with the payment of annuities amounting to $5680; but it is estimated that even now, after defraying the necessary expenses of the Ridgway Branch, a considerable yearly sum will be left for the purchase of books.

Another gratifying fact which the Board are able to communicate at the present time, and one which removes the principal objection heretofore felt to the acceptance of Dr. Rush's gift, is that the Supreme Court has recently decided that so much of the Company's property as is actually used for library purposes is exempt from taxation.

In the mean time the present library building has become so crowded that there is little or no further shelf room available for the storage of books. Immediate relief from this embarrassment will be afforded by the use of the Ridgway Branch, to which the Directors propose to remove not only such books as, if destroyed by fire, could never be replaced, but also—with the approval of their co-trustees—the entire Loganian Library, together with that portion of the Company's own collection which may be considered more particularly as a library of reference. The business of a circulating library, which was the original and primary object of the association, will still be carried on mainly in the present building, which will be connected by telephone with the one at Broad and Christian Streets, the American District Telegraph Company affording facilities for sending books from either to the houses of members and others.

The above-mentioned action of the Court, investing the Company with the management of the Trust created by Dr.

Rush's will, finds the Board of Directors charged with the administration of another trust, that is to say, the Building Fund started in 1856. This fund, as will be seen by the accompanying Report of the Treasurer, now amounts to $117,544.44, of which $71,809.18 is invested in real estate at the corner of Locust and Juniper Streets. The remainder would be sufficient, at the present reduced cost of building, to put up a fire-proof structure on that or some other convenient lot, sufficient to contain all the books which it is necessary for the Company to keep in a central location; and whenever a satisfactory offer is received for the Company's property at Fifth and Library Streets the question of removal will be seriously entertained.

In conclusion, the Directors once more congratulate the Company on the prosperous condition of its affairs, and confidently predict for the Institution an increase of usefulness in the future.

On motion of Hon. Eli K. Price, seconded by Edward Bedlock, Esq., the report was unanimously accepted, and the meeting adjourned.

The Ridgway Branch at Broad and Christian Streets is not yet open to the public, but Mr. George M. Abbot, the Assistant-in-charge, is authorized to admit, between the hours of 9 A.M. and 5 P.M., such of the members and their friends as desire to inspect the interior of the building. The 13th Street cars, and the green cars of the Union Line on 7th Street, go direct to the Library.

AMERICAN DISTRICT TELEGRAPH COMPANY.

An arrangement has been made with the above Company by which books can be sent from the Library or the Ridgway Branch to any place between the Delaware and the Schuylkill, and between Federal and Wallace Streets, for TEN CENTS. Tickets for sale at the desk.

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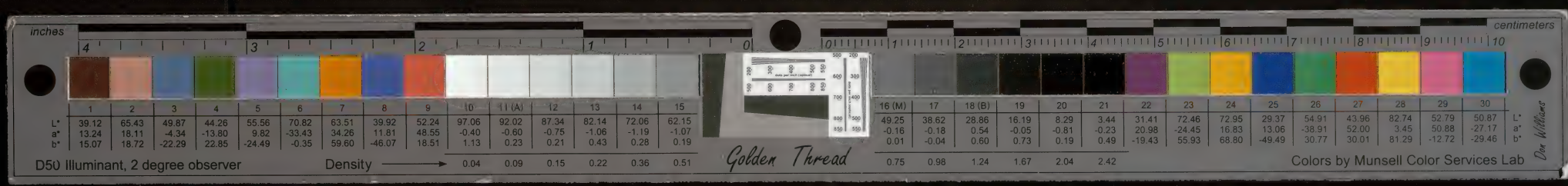
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Don Williams
D50 Illuminant, 2 degree observer
Density
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0.75 0.98 1.24 1.67 2.04 2.42
Colors by Munsell Color Services Lab
1 2 3 4 5 6 7 8 9 10 11 (A) 12 13 14 15
L* 39.12 65.43 49.87 44.26 55.56 70.82 63.51 39.92 52.24 97.06 92.02 87.34 82.14 72.06 62.15
a* 13.24 18.11 -4.34 -13.80 9.82 -33.43 34.26 11.81 48.55 -0.40 -0.60 -0.75 -1.06 -1.19 -1.07
b* 15.07 18.72 -22.29 22.85 -24.49 -0.35 59.60 -46.07 18.51 1.13 0.23 0.21 0.43 0.28 0.19
16 (M) 17 18 (B) 19 20 21 22 23 24 25 26 27 28 29 30
L* 49.25 38.62 28.86 16.19 8.29 3.44 31.41 72.46 72.95 29.37 54.91 43.96 82.74 52.79 50.87
a* -0.16 -0.18 0.54 -0.05 -0.81 -0.23 20.98 -24.45 16.83 13.06 -38.91 52.00 3.45 50.88 -27.17
b* 0.01 -0.04 0.60 0.73 0.19 0.49 -19.43 55.93 68.80 -49.49 30.77 30.01 81.29 -12.72 -29.46

Philadelphia, Thursday, Feb. 19, 1880.

The New Philadelphia Library Building.—On Tuesday next, an event of some historical importance will occur in this city, being the removal of the Philadelphia Library Company to its new building, at Locust and Juniper streets, from the premises used by the company, at Fifth and Library streets, since the year 1799. The lot on which the new structure has been erected was purchased by the company in 1869, and in April, 1879, work was commenced, the erection of the building being entrusted to Mr. Frank Turner, architect, who furnished the plans. The total cost of the work has been about $50,000, and with this sum has been erected a building with shelf-room for 60,000 volumes. The building is of brick, of a mixed order of architecture, but, like other designs by the same architect, is very striking to the eye. It is of brick, with brown-stone trimmings, two stories in height, with wide steps on Locust street, and near the top of the façade, in a niche, stands the marble statue of Franklin, so long a familiar object on the front of the Fifth street building. In the rear of the library is a large space laid down in grass, and having a handsome iron railing. The body of the library consists of a room about seventy feet square, lighted from the ceiling and sides, with an iron gallery running around it, so placed that on occasions additional galleries may be placed above and below it.

Around the walls of this room and in wing cases in the galleries, are book cases made of pine and finished with shellac, and having wire nettings similar to those in the Fifth Street Library. The whole building will be heated by steam, but the main hall and other rooms are set off by handsome open fire-places with basket grates. Near the entrance door the Librarian's desk is so placed as to give that official a full view of every part of the hall. West of the entrance door is a ladies' room, about 20 feet square, finished in the same style as the main hall, and on the other side of the door-way is the Librarian's room, and a small room intended to be used for works of reference.

In the vestibule of the main entrance, the light will pass through panes of glass bearing the old seal of the company, which may be described as a cloud from which issues a stream of water, running into a vase, and issuing from the vase in five branches, each of which runs into a smaller vase. Beside this emblem there are two open books, with streams of light breaking from their pages.

The design smacks of Franklin, and doubtless was evolved from his brain. On the floor of the vestibule, laid in tiles, are the words "Communiter Bona, Profundere Deum Est," which has been variously translated, but conveys the idea that it is god-like to pour good things forth copiously for all. This motto has been used on the book labels of the company since its foundation. In the basement of the building are the Janitor's quarters, and every room is lit with gas and heated by steam. On the second-story front are several small rooms, to be used by the directors and for keeping bound volumes of newspapers, of which the company has a large number, including a complete series of the *Pennsylvania Packet* of 1773, and its regular successors, *Poulson's American Advertiser*, the *United States Gazette*, and the *North American* to the present day.

The library also contains a complete file of the PUBLIC LEDGER, except of the year 1840. Most of the antiquated furniture now in the library on Fifth street will be removed to the Rush Library, but the familiar busts, paintings and engravings will decorate the walls of the new structure. A wooden finial, formerly surmounting the front of the Fifth street building, will be placed on the roof of the new building, and the old tin box, with the lion's mouth, used for the notices of books wanted, will call to mind the old structure vacated by the westward march of population.

The new library will be connected with the Rush Library, and with other sections of the city by telephone.

To-day the Fifth street building will be open for the last time, and on Tuesday next, at 9 A. M., the company will commence business in its new quarters.

LEDGER AND TRANSCRIPT.

Philadelphia, Saturday, May 20, 1882.

The Ridgway Library.

For the Public Ledger.

MR. EDITOR:—In the Supplement to the LEDGER of Saturday, May 6th, you give as the reason for the small attendance of visitors and readers at the Ridgway Branch of the Philadelphia Library, the location and the want of population. The true reason in my opinion rests with the management. The only notice that the public has that it is open to them for free use is contained on two wooden shields about 12 in. x18 in., placed on the gate posts. Over the top, in letters two inches or more long, are the words, "Ridgway Branch Philadelphia Library." Underneath this in letters of the same size, are the figures 1736—1869, whilst between them, in letters *barely one-half an inch long* and not the *most distinct either*, are the words, "open to the public."

Is it any wonder, think you, that not one out of five hundred of those who pass the building daily knows that the Library is free to the public? I should think that the fact of the Library being a free one was of more importance to know than the name and that it was founded in 1736.

Instead of the gates being thrown open and a cordial invitation given to enter, they are closed, but not locked; everything about the place has a forbidding aspect, and says, "keep off, you are not wanted here," and the people feel it so.

Let the managers pursue a different policy from the one now in vogue and they will not fail for want of visitors and readers.

I think I am capable of expressing an opinion on this matter, as I have lived in the neighborhood for the last fifteen years, and have passed the spot on which the Library stands twice daily for almost all that time.

SOUTH BROAD STREET.

PHILADELPHIA, MAY 2, 1882.

The Philadelphia Library's Condition.

At the meeting of the stockholders of the Philadelphia Library Company yesterday, Chief Justice Sharswood presiding, it was reported that the Loganian Library and the Ridgway Branch are self-supporting; the latter was enabled to spend $2,695 during the past year for books and binding. The amount of money on hand will warrant the appropriation of a still larger sum for the same object during the coming year. The library has acquired a valuable collection of manuscripts and papers left by the late John J. Smith, the father and immediate predecessor of the present librarian. W. H. B. Thomas, who is arranging them, is also arranging the papers of the late Dr. James Rush. "With such a nucleus as exists in these two collections," the report said, "the directors believe it is proper to create a manuscript department, and have therefore set aside the directors' room at the Ridgway Branch of the library for the safe keeping of these and of any future acquisitions of the same kind." They have already reason to believe that at least two other valuable collections will eventually find their way to that department.

More Policy Dealers Sentenced.

PUBLIC LEDGER
AND DAILY TRANSCRIPT.
Philadelphia, Saturday, July 3, 1886.

Death of Lloyd P. Smith, Librarian and Treasurer of the Library Company of Philadelphia.—Lloyd P. Smith, Librarian and Treasurer of the Library Company of Philadelphia, died at his home, No. 4703 Germantown avenue, yesterday morning, aged 64 years. His health had been unusually good until a few months ago. He was born February 6th, 1822. His father, John Jay Smith, his immediate predecessor as Librarian of the Philadelphia Company, placed him in Haverford College, from which he graduated at the age of 14 years. He received a business training in the dry goods house of Leaming & Co., and, while yet a very young man, began the publication of law books. This he followed up by publishing "Smith's Weekly Volume," a magazine which was credited with being "a select circulating library for town and country, containing the best popular literature." The publication began in 1845, and took the place of "Waldie's Select Circulating Library," which started with John Jay Smith as editor in 1832. In 1849 Lloyd P. Smith became assistant to his father as Librarian of the Philadelphia Company, and upon the resignation of the latter in 1851, after 22 years of service in the position, he succeeded to the office of Librarian. The library was then, and since 1799 had been, located at Fifth and Library streets. By the conditions of the will of James Logan, which were validated by an act of the Legislature approved March 31st, 1792, Mr. Smith, who was a direct descendant in the fourth generation of that distinguished Quaker and Deputy Governor of the Provinee, became the eighth hereditary librarian of the Loganian Library, then and now held by the Philadelphia Company in trust. He also had supervision of the Ridgway Library, of which the Philadelphia Company is trustee. During his long stewardship he translated many works. As a compiler and classifier he also rendered valuable and efficient service. For several years he was the editor of "Lippincott's Magazine." He frequently contributed to periodicals, and many of his literary productions are now registered at the library. Among others of these are "Remarks on the Existing Materials for Forming a Just Estimate of the Character of Napoleon the First," and "Remarks on the Apology for Imperial Usurpation Contained in Napoleon's Life of Cæsar." He prepared a paper on "The Classification of Books" in 1882, and compiled an elaborate "Bibliography of that Ancient and Honorable Order, the Society of the Cincinnati" in 1885. A speech at the inauguration of the new hall of the Pennsylvania Historical Society, of which he was a member, and a paper on "Symbolism and Science," are also among his works.

During the war Mr. Smith took an active part, with James M. Thomas, Frederic Collins, and others, in collecting money for the relief of the loyal people of Eastern Tennessee, and went in person to distribute the funds. He also enlisted as a three months' volunteer, and assisted in the defence of the nation during the Gettysburg campaign.

He married Hannah E., daughter of Isaac C. Jones, an East India merchant, and lived for many years on the estate of the latter at Rockland, now in Fairmount Park. He was a leading member of the National Association of Librarians, a trustee of old Laurel Hill Cemetery and one of the originators and formerly treasurer of the West Laurel Hill Company. He was also a member of St. Luke's Protestant Episcopal Church, in Germantown,

Contract for a New School Building.—The Committee on Property of the Board of

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L*	39.12	65.43	49.87	44.26	55.56	70.82	63.51	39.92	52.24	97.06	92.02	87.34	82.14	72.06	62.15
a*	13.24	18.11	-4.34	-13.80	9.82	-33.43	34.26	11.81	48.55	-0.40	-0.60	-0.75	-1.06	-1.19	-1.07
b*	15.07	18.72	-22.29	22.85	-24.49	-0.35	59.60	-46.07	18.51	1.13	0.23	0.21	0.43	0.28	0.19
Density										0.04	0.09	0.15	0.22	0.36	0.51

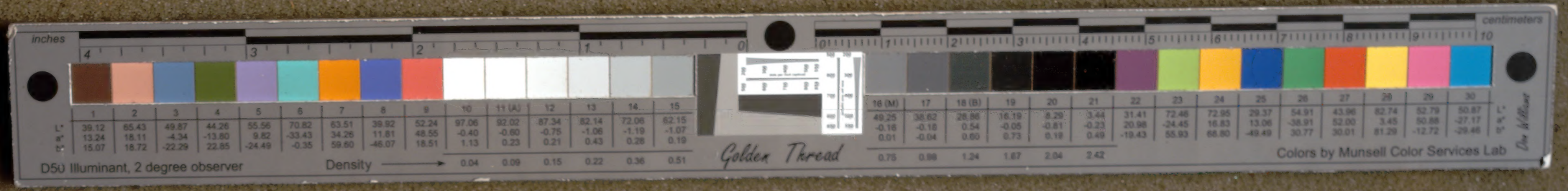
	16 (M)	17	18 (B)	19	20	21	22	23	24	25	26	27	28	29	30
L*	49.25	38.62	28.86	16.19	8.29	3.44	31.41	72.46	72.95	29.37	54.91	43.96	82.74	52.79	50.87
a*	-0.16	-0.18	0.54	-0.05	-0.81	-0.23	20.98	-24.45	16.83	13.06	-38.91	52.00	3.45	50.88	-27.17
b*	0.01	-0.04	0.60	0.73	0.19	0.49	-19.43	55.93	68.80	-49.49	30.77	30.01	81.29	-12.72	-29.46
Density	0.75	0.98	1.24	1.67	2.04	2.42									

D50 Illuminant, 2 degree observer

Golden Thread

Colors by Munsell Color Services Lab

Don Williams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